

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





ORIGINAL

74-1007-1637

# United States Court of Appeals

For the Second Circuit.

FRANCIS J. LANGFORD, individually and as natural guardian of  
FRANK P. LANGFORD, an infant, *Plaintiff-Appellee*,

*against*

CHRYSLER MOTOR CORP.,  
*Defendant-Appellant*,

*and*

WOODBIDGE DODGE, INC.,  
*Defendant-Appellee*.

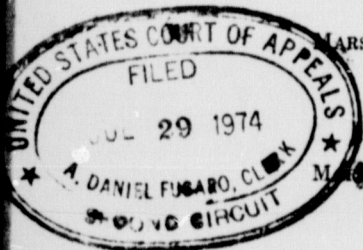
ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK.

## APPENDIX.

EMILE Z. BERMAN and A. HAROLD FROST,  
*Attorneys for Defendant-Appellant*,  
77 Water Street,  
New York, N. Y. 10005

MARSHALL G. KAPLAN,  
*Attorney for Plaintiff-Appellee*,  
50 Court Street,  
Brooklyn, N. Y. 11201

M. HOFF, GOTTLIEB, LAZARUS, D'AURIA & MALDONADO,  
*Attorneys for Defendant-Appellee*,  
Woodbridge Dodge, Inc.,  
401 Broadway,  
New York, N. Y. 10013



PAGINATION AS IN ORIGINAL COPY

## Index to Appendix.

	Page
Docket Entries .....	1a
Complaint .....	4a
Answer and Cross-Complaint of Defendant Chrysler Motors Corp. ....	7a
Answer and Cross-Complaint of Defendant Wood- bridge Dodge, Inc. ....	11a
Answer of Defendant, Woodbridge Dodge, Inc., to Cross-Complaint of Defendant Chrysler Mo- tors Corp. ....	16a
Transcript, September 10, 1973 (A.M.) .....	17a
Transcript, September 11, 1973 .....	100a
Motions .....	169a
Decision by Costantino, D. J. ....	170a
Judgment Appealed From .....	177a
Notice of Appeal of Defendant, Chrysler Motors Corp. ....	178a
Stipulation <i>Re</i> Exhibits .....	179a



## TESTIMONY.

## WITNESSES FOR PLAINTIFF:

	Page
Hassan, Morris:	
Direct by Mr. Kaplan .....	81a
Cross by Mr. Ausubel .....	88a
Re-direct by Mr. Kaplan .....	93a
Cross by Mr. Groff .....	99a
Kuschell, Kenneth:	
Direct by Mr. Kaplan .....	51a
Cross by Mr. Ausubel .....	58a
Re-direct by Mr. Kaplan .....	71a
Cross by Mr. Groff .....	79a
Langford, Francis J.:	
Direct by Mr. Kaplan .....	17a
Cross by Mr. Ausubel .....	26a
Cross by Mr. Groff .....	47a
Morfopoulos, Vasilis:	
Direct by Mr. Kaplan .....	119a
Cross by Mr. Ausubel .....	134a
Cross by Mr. Groff .....	154a
Re-direct by Mr. Kaplan .....	155a
Re-cross by Mr. Ausubel .....	156a

## WITNESSES FOR DEFENDANTS:

D'Angelo, John:	
Direct by Mr. Ausubel .....	105a
Cross by Mr. Kaplan .....	113a
Re-direct by Mr. Ausubel .....	116a
Re-cross by Mr. Kaplan .....	117a
Re-direct by Mr. Ausubel .....	118a
Eberd, David Charles:	
E. B. T. ....	158a

# United States Court of Appeals

FOR THE SECOND CIRCUIT.

FRANCIS J. LANGFORD, individually and as natural guardian  
of Frank P. Langford, an infant,  
*Plaintiff-Appellee,*

*against*

CHRYSLER MOTOR CORP.,  
*Defendant-Appellant,*

*and*

WOODBIDGE DODGE, Inc.,  
*Defendant-Appellee.*

## Docket Entries.

Date	Filings—Proceedings
1972	
Oct. 4	Complaint filed. Summons issued.
Oct. 27	Summons rtd & filed. Executed.
Nov. 3	ANSWER (Woodbridge Dodge Inc.) filed and CROSS COMPLAINT AND INTERROGATORIES.
Nov. 29	Deft's interrogatories to plttf filed.
Nov. 29	Deft's (CHRYSLER) reply to cross claim filed.
Nov. 29	Answer filed (CHRYSLER)
Dec. 1	Deft's (WOODBIDGE) reply to cross claim filed.
Dec. 6	Copy of letter of Zavatt, J. dtd 12/5/72 setting case down for 3/26/72 filed.

*Docket Entries*

1973

- Jan. 30 Pltff's answers to deft's (WOODBRIDGE) interrogatories filed.
- Jan. 30 Pltff's answers to deft's (CHRYSLER) interrogatories filed.
- Feb. 1 Notice to take deposition of Pltffs and Deft Woodbridge Dodge, Inc. filed
- March 26 Before ZAVATT, J.—Case called—Attys for both sides present—Pre-trial conference held and concluded.
- May 4 Copy of letter from Judge Zavatt dtd 5-3-73 setting 6-5-73 for trial filed.
- May 16 Stenographer's transcript dtd 3-26-73 filed.
- June 5 Before COSTANTINO, J.—Case called. Pre-trial conference held & concluded. Case set down for trial on 6-27-73 at 10 A.M.
- June 27 Before COSTANTINO, J.—Case called & trial adj'd to 9-10-73.
- Sept. 10 Before COSTANTINO, J.—Case called—Trial ordered and begun—Trial cont'd to 9/11/73 at 11:30 A.M.
- Sept. 11 Before COSTANTINO, J.—Case called—Trial resumed—All sides rest—Motions to dismiss complaint—Decision reserved—Trial concluded—Decision reserved.
- Dec. 13 Stenographer's transcript of Sept. 10, 1973 filed.

1974

- Jan. 3 Stenographer's transcript dtd 9-11-73 filed.
- Jan. 21 Post-trial memorandum of deft Chrysler Motors Corp filed.
- Jan. 29 Pltffs' post trial memorandum of law filed.
- Jan. 31 Reply post-trial memorandum of deft. Chrysler Motors Corp filed.

*Docket Entries*

- Apr. 19 By COSTANTINO, J.—Memorandum of decision dtd 4-18-74 granting plttf infant \$9000 and father \$1420.70 filed. Settle judgment on notice.
- Apr. 29 Bill of costs filed. Cost taxed in the sum of \$94.04 as against defts.
- May 6 By COSTANTINO, J.—JUDGMENT dtd 4-30-74 that Francis J. Langford recover of defts the sum of \$10,420.70 plus costs of \$94.04 amounting to \$10,514.74 and that deft Woodbridge Dodge is allowed full indemnification for sums adjudged over and against deft Chrysler Motors Corp filed. (p/c mailed to attys).
- May 8 Notice of appeal filed. Duplicate of appeal & docket entries mailed to C of A. jn



**Complaint.**

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

---

FRANCIS J. LANGFORD, individually and as natural guardian  
of Frank P. Langford, an infant,

*Plaintiff,*

*against*

CHRYSLER MOTORS CORP. and  
WOODBIDGE DODGE, Inc.,

*Defendants.*

---

Plaintiff, complaining of the defendants, alleges:

FIRST CAUSE OF ACTION

1. That jurisdiction is based on diversity of citizenship and the amount in suit exceeds the sum of \$10,000.00.
2. That plaintiff is a resident of the Eastern District of New York.
3. That both of the defendant corporations were incorporated outside the State of New York and each maintains its principal place of business outside the State of New York.
4. That on or about July 9, 1971 plaintiff purchased from defendant Woodbridge a new Dodge automobile bearing identification number LH23BIR 292919.
5. That said automobile was manufactured by defendant Chrysler or one of its divisions.

*Complaint*

6. That each defendant impliedly or expressly warranted to plaintiff that the said automobile was properly manufactured and in all respects free from defects which would make it unsuitable for the use intended.

7. That on or about December 3, 1971 the plaintiff was operating the said automobile on Victory Boulevard, Staten Island, New York with his son Frank P. Langford as a passenger therein.

8. That thereupon plaintiff lost steering control of his vehicle and the same was caused to collide with two other cars, a utility pole and a retaining wall.

9. That such collision was caused by a defective right ball joint which was improperly designed or assembled resulting in a seizure or disengagement of the ball stud from the socket resulting in the loss of steering control alleged.

10. That such defect existed when the automobile was sold to the plaintiff and rendered the same unfit for the use intended.

11. That as a result of the foregoing the infant was propelled into the dashboard of the vehicle sustaining various and sundry personal injuries such of which may be permanent.

12. That as a result of the foregoing plaintiff was damaged to the extent of Twenty-Five Thousand (\$25,000.00) Dollars.

*SECOND CAUSE OF ACTION*

13. Plaintiff repeats and realleges paragraphs "1" through "11" herein.

*Complaint*

14. That as a result of the foregoing plaintiff was deprived of the society and services of his son and was forced to incur medical and dental expenses, all to his damage in the sum of Ten Thousand (\$10,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants for \$25,000.00 on the first cause of action and \$10,000.00 on the second cause of action, together with the costs and disbursements of this action.

MARSHALL G. KAPLAN

Attorney for Plaintiff

50 Court Street

Brooklyn, N. Y. 11201

212 855-7728

**Answer and Cross-Complaint of Defendant Chrysler  
Motors Corp.**

**UNITED STATES DISTRICT COURT,**

**EASTERN DISTRICT OF NEW YORK.**

**[SAME TITLE.]**

Defendant, Chrysler Motors Corp., by its attorneys, Emile Z. Berman and A. Harold Frost, answering the complaint of the plaintiff, respectfully states and alleges:

**ANSWERING THE FIRST CAUSE OF ACTION:**

1. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph of the complaint numbered "1".

2. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph of the complaint numbered "2".

3. Denies any knowledge or information as to defendant, Woodbridge Dodge, Inc., sufficient to form a belief as to the allegations contained in paragraph of the complaint numbered "3".

4. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph of the complaint numbered "4".

5. Denies each and every allegation contained in paragraphs of the complaint numbered "5".

6. Denies each and every allegation contained in paragraph of the complaint numbered "6" as to defendant, Chrysler Motors Corp.

7. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph of the complaint numbered "7".



*Answer and Cross-Complaint of Defendant Chrysler  
Motors Corp.*

8. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph of the complaint numbered "8".

9. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph of the complaint numbered "9".

10. Denies each and every allegation contained in paragraph of the complaint numbered "10".

11. Denies each and every allegation contained in paragraph of the complaint numbered "11".

12. Denies each and every allegation contained in paragraph of the complaint numbered "12".

ANSWERING THE SECOND CAUSE OF ACTION:

13. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph of the complaint numbered "13".

14. Denies each and every allegation contained in paragraph of the complaint numbered "14".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

15. Any injuries and damages suffered by the plaintiff were caused and/or contributed by virtue of the contributory negligence of the plaintiff.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

16. Any injuries and damages sustained by the plaintiff were the result of the misuse and/or abuse of the aforesaid motor vehicle by the plaintiff.

*Answer and Cross-Complaint of Defendant Chrysler  
Motors Corp.*

AS AND FOR A CROSS-CLAIM BY THE DEFENDANT, CHRYSLER MOTORS CORP. AGAINST THE DEFENDANT, WOODBRIDGE DODGE, INC.

17. In his complaint the plaintiff alleged in substance that the subject accident occurred by reason of the negligence and breaches of warranty of the defendant, Woodbridge Dodge, Inc., as more particularly set forth herein.

18. That in the event that defendant, Chrysler Motors Corp. is held liable to the plaintiffs herein or any of them, such liability will be imposed by the said defendant due to the negligence of the co-defendant and/or its breaches of warranty.

19. That by reason of the foregoing, the defendant, Chrysler Motors Corp. is entitled to indemnity and/or contribution from said defendant, Woodbridge Dodge, Inc.

AS AND FOR A COUNTERCLAIM BY THE DEFENDANT, CHRYSLER MOTORS CORP. AGAINST THE PLAINTIFF, FRANCIS J. LANGFORD, INDIVIDUALLY:

20. That the said accident, which is the subject of this suit occurred by reason of the active negligence of the plaintiff, Francis J. Langford, individually, in that he carelessly and negligently managed, operated, maintained and controlled his motor vehicle under the circumstances then and there prevailing.

21. That if the defendant, Chrysler Motors Corp. is held liable to the plaintiffs herein it will have been due to the active negligence of the plaintiff, Francis J. Langford, individually or alternatively that the negligence of the plaintiff, Francis J. Langford, individually will have concurred in causing this occurrence.

*Answer and Cross-Complaint of Defendant Chrysler  
Motors Corp.*

22. That by reason of the foregoing, defendant, Chrysler Motors Corp. is entitled to indemnity and/or contribution from plaintiff, Francis J. Langford, individually.

WHEREFORE, defendant, Chrysler Motors Corp. demands judgment dismissing the complaint of the plaintiffs herein and defendant, Chrysler Motors Corp. demands judgment indemnifying it or granting it contribution on the cross-claim against the defendant, Woodbridge Dodge, Inc. and the defendant, Chrysler Motors Corp. demands judgment against the plaintiff, Francis J. Langford, individually, indemnifying it or awarding it contribution against the said plaintiff, Francis J. Langford, individually on the counterclaim, together with the costs and disbursements of this action.

EMILE Z. BERMAN AND  
A. HAROLD FROST

Attorneys for Defendant,  
Chrysler Motors Corp.

By: MARVIN V. AUSUBEL

Member of the Firm

Office & P. O. Address

77 Water Street

New York, New York 10005

**Answer and Cross-Complaint of Defendant Woodbridge  
Dodge, Inc.**

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Defendant, Woodbridge Dodge, Inc., by its attorneys, Markhoff, Gottlieb, Lazarus, D'Auria & Maldonado, P. C., answering the complaint of the plaintiffs, alleges as follows:

ANSWERING A FIRST CAUSE OF ACTION:

1. Denies each and every allegation contained in paragraphs of the complaint marked and numbered "1", "6", "9", "10", "11" and "12".

2. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs of the complaint marked and numbered "2", "3", "7" and "8".

ANSWERING A SECOND CAUSE OF ACTION:

3. Repeats and realleges each and every denial as set forth in paragraphs of the complaint marked and numbered "1", "6", "9", "10", "11" and "12".

4. Denies each and every allegation contained in paragraph of the complaint marked and numbered "14".

AS AND FOR A FIRST CROSS-COMPLAINT OVER AND AGAINST THE DEFENDANT, CHRYSLER MOTORS CORP., THE DEFENDANT, WOODBRIDGE DODGE, INC., ALLEGES, UPON INFORMATION AND BELIEF:



*Answer and Cross-Complaint of Defendant Woodbridge  
Dodge, Inc.*

5. The defendant, Chrysler Motors Corp., was and still is a foreign corporation, duly licensed to transact business in the State of New York.

6. That during all the times herein mentioned, the defendant, Chrysler Motors Corp., was and is engaged in the design, manufacture, distribution and sale of motor vehicles.

7. That during all the times mentioned herein, the defendant, Chrysler Motors Corp., advertised, stated and represented that the motor vehicles they designed, manufactured, sold were properly designed, manufactured and distributed, and that said motor vehicles were safe to operate.

8. The defendant, Chrysler Motors Corp., designed, manufactured, distributed and sold a certain 1971 Dodge automobile, bearing motor vehicle identification number LH23BIR292919.

9. The defendant, Chrysler Motors Corp., placed the aforesaid motor vehicle in the possession of Woodbridge Dodge, Inc., an authorized Dodge dealer, for the purpose of sale to the public.

10. The defendant, Woodbridge Dodge, Inc. purchased the aforesaid motor vehicle from the defendant, Chrysler Motors Corp., on or about June 18, 1971.

11. The defendant, Chrysler Motors Corp., expressly warranted that the aforesaid motor vehicle was properly designed, manufactured and distributed, and that the aforesaid motor vehicle was not defective, and that the aforesaid motor vehicle was safe to operate, and that the ball joint, the steering mechanism and/or steering assembly of the aforesaid motor vehicle was safe, without defect, and adequate, in view of the expectable operation of the aforesaid motor vehicle.

*Answer and Cross-Complaint of Defendant Woodbridge Dodge, Inc.*

12. That the defendant, Woodbridge Dodge, Inc., relied on the aforesaid warranties and representations, and that the aforesaid warranties and representations were part of the basis of the bargain which resulted in the purchase and sale of the aforesaid motor vehicle.

13. The plaintiff in his complaint, alleges he sustained injuries, due to the operation of the aforesaid motor vehicle.

14. The plaintiff alleges damages in the sum of Thirty-Five Thousand (\$35,000.00) Dollars, and reference is here made to the plaintiff's complaint as if stated in full.

15. If the plaintiff suffered any damages or injuries, and if the plaintiff shall recover a judgment by reason of the premises set forth in his complaint, said judgment will have been brought about by the breach of the aforesaid express warranties made by the defendant, Chrysler Motors Corp., due to its improper and defective design, manufacture, distribution and sale of the aforesaid motor vehicle, and the ball joint, the steering mechanism and/or steering assembly of the aforesaid motor vehicle, and due to the defective and unsafe condition of said motor vehicle, ball joint and steering mechanism and/or steering assembly at the time the defendant, Chrysler Motors Corp., parted with possession of said motor vehicle, without any action on the part of the defendant, Woodbridge Dodge, Inc., contributing thereto; therefore, the defendant, Chrysler Motors Corp., will be liable over to the defendant, Woodbridge Dodge, Inc., for the amount of the aforesaid judgment, if any, together with costs, disbursements and counsel fees.

AS AND FOR A SECOND CROSS-COMPLAINT OVER AND AGAINST THE DEFENDANT, CHRYSLER MOTORS CORP., THE DEFENDANT, WOODBRIDGE DODGE, INC., ALLEGES, UPON INFORMATION AND BELIEF:

*Answer and Cross-Complaint of Defendant Woodbridge Dodge, Inc.*

16. The defendant, Woodbridge Dodge, Inc., repeats and reiterates the allegations contained in the paragraphs designated "5" through "15" inclusive, as if here stated in full.

17. The defendant, Chrysler Motors Corp., impliedly warranted that the aforesaid motor vehicle was merchantable.

18. If the plaintiff suffered any damages or injuries, and if the plaintiff shall recover any judgment by reason of the premises set forth in his complaint, then judgment will have been brought about by the breach of the aforesaid implied warranties of merchantability by the defendant, Chrysler Motors Corp., due to its improper and defective design, manufacture, distribution and sale of the aforesaid motor vehicle, and the ball joint, the steering mechanism and/or steering assembly, in the aforesaid motor vehicle, and due to the defective, unsafe and unmerchantable condition at the time the defendant, Chrysler Motors Corp., parted with possession of said motor vehicle, without any action on the part of the defendant, Woodbridge Dodge, Inc., contributing thereto; therefore, the defendant, Chrysler Motors Corp., will be liable over to the defendant, Woodbridge Dodge, Inc., for the amount of said judgment, if any, together with costs, disbursements and counsel fees.

AS AND FOR A THIRD CROSS-COMPLAINT OVER AND AGAINST THE DEFENDANT, CHRYSLER MOTORS CORP., THE DEFENDANT, WOODBRIDGE DODGE, INC., ALLEGES, UPON INFORMATION AND BELIEF:

19. The defendant, Woodbridge Dodge, Inc., repeats and reiterates the allegations contained in the paragraphs designated "5" through "15" inclusive, as if here stated in full.

*Answer and Cross-Complaint of Defendant Woodbridge  
Dodge, Inc.*

20. That if the plaintiff sustained the injuries and damages in the manner and at the time and place claimed, and if it was found that the defendant, Woodbridge Dodge, Inc., is liable to plaintiff herein, then the defendant, Woodbridge Dodge, Inc., on the basis of an apportionment of responsibility for the alleged accident, is entitled to indemnification from and judgment over and against the said defendant, Chrysler Motors Corp., for all or part of any verdict or judgment that plaintiff may recover against said defendant, Woodbridge Dodge, Inc.

WHEREFORE, defendant, Woodbridge Dodge, Inc., demands judgment dismissing the complaint herein, together with costs and disbursements of this action, or, in the event that a judgment is recovered against said defendant, that the defendant, Woodbridge Dodge, Inc., have judgment over and against the codefendant, Chrysler Motors Corp., in the same amount, together with the costs, disbursements and counsel fees.

Dated: New York, New York  
November 2, 1972

JULIAN H. GOTTLIEB

MARKHOFF, GOTTLIEB, LAZARUS, D'AURIA  
& MALDONADO, P. C.

Attorneys for Defendant, Woodbridge  
Dodge, Inc.

Office & P. O. Address

401 Broadway

New York, New York 10013

(212) 226 6848



**Answer of Defendant, Woodbridge Dodge, Inc., to  
Cross-Complaint of Defendant Chrysler Motors Corp.**

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Defendant, Woodbridge Dodge, Inc., by its attorneys, Markhoff, Gottlieb, Lazarus, D'Auria & Maldonado, P. C., answering the cross-complaint of the defendant, Chrysler Motors Corp., respectfully states and alleges:

1. Denies the allegations contained in paragraphs "18" and "19" of the cross-complaint.

WHEREFORE, defendant, Woodbridge Dodge, Inc., demands judgment dismissing the cross-complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York  
November 30, 1972

MARKHOFF, GOTTLIEB, LAZARUS, D'AURIA  
& MALDONADO, P. C.

Attorneys for Defendant Woodbridge

By: s/ Julian H. Gottlieb

A Member of the Firm

401 Broadway

New York, New York 10013

To:

Marshall G. Kaplan, Esq.

Attorney for Plaintiffs

Office & P. O. Address

50 Court Street

Brooklyn, New York 11201

Emile Z. Berman and

A. Harold Frost, Esqs.

Attorneys for Defendant Chrysler

Office & P. O. Address

77 Water Street

New York, New York 10005

**Transcript, September 10, 1973 (A.M.)**

**UNITED STATES DISTRICT COURT,**

**EASTERN DISTRICT OF NEW YORK.**

**[SAME TITLE.]**

United States Courthouse  
Brooklyn, N. Y.  
September 10, 1973  
10:00 o'clock A.M.

Before:

Honorable Mark A. Costantino, U.S.D.J.

(2) Appearances:

Marshall G. Kaplan, Esq., Attorney for the Plaintiff.

Markhoff, Gottlieb, Lazar, D'Auria & Maldonado, Attorneys for Woodbridge Dodge Inc., By: Samuel Graff, Esq., of Counsel.

Berman & Frost, 77 Water Street, New York, New York, Attorneys for Chrysler Motor Corp., By: Marvin V. Ausubel, Esq., of counsel.

(3) FRANCIS J. LANGFORD: having been called as a witness, was duly sworn by the Clerk of the Court, took the stand and testified as follows:

Q. Where do you live? A. Staten Island, New York.

Q. Give your address. A. 69 Efiton Place.

Q. Are you married? A. Yes.

Q. What does your family consist of? A. A son and a daughter.

Q. Do you live with your wife and son and daughter at that address? A. Yes.

Q. How long have you lived there? A. About two years.

*Francis J. Langford, Plaintiff, Direct*

Q. What do you do for a living? A. Work for Con Edison, substation maintenance on State Island.

Q. Where do you work on State Island, from what place?

A. From the Travis substation located on the west shore of Staten Island.

(4) Q. Are you a licensed driver in the State of New York? A. Yes.

Q. How long have you been licensed? A. About 13 years.

Q. Did there come a time when you purchased a Dodge automobile from Woodbridge Dodge? A. Yes.

Q. When was that? A. July of '71.

Q. And can you describe the car for us? A. It was an automatic car, 6 cylinder, gold, '71.

Q. What kind was it? A. A Dodge Swinger.

Q. How many doors did it have? A. Two.

Q. Did you buy the car new or used? A. New.

Q. Now, when you bought it in July of '71, who operated the car thereafter? A. Myself and my wife.

Q. Can you tell us generally where it was operated? A. On Staten Island mostly.

Q. Now, in December of 1971 about how many miles (5) did the car have on it? A. About four thousand.

Q. What was the operating condition of the car? A. Very good.

Q. Had it been operating well between July and December? A. Yes.

Q. Did there come a time when you took the car into Woodbridge Dodge for a check of some kind? A. Yes, December 2nd.

Q. Between the date you bought the car, July and December 2, 1971, had the car been serviced or repaired by anybody? A. No.

Q. When you brought it in in December of '71 to Woodbridge Dodge what was the purpose of bringing the car there? A. Just the 4,000 mile check-up.

*Francis J. Langford, Plaintiff, Direct*

Q. Do you know what the 4,000 mile check-up consisted of? A. No.

Q. Did you pay Woodridge for the check-up? A. No.

Q. Is this the bill for it or the receipt, or did (6) you get this paper from Woodbridge Dodge after the check-up?  
A. Yes.

Mr. Kaplan: I offer it.

Mr. Graff: For what purpose is it offered?

Mr. Ausubel: I have no objection.

The Court: It's merely for the purpose of showing it was taken in for a check-up.

Mark it.

Q. Did you personally take the car in for the check-up on December 2nd, '71? A. Yes.

Mr. Graff: I object to the word check-up because I don't believe—

The Court: It's for service.

Mr. Kaplan: That's all I meant.

The Court: Maybe we can stipulate that there is a 4,000 mile check-up.

Mr. Ausubel: Actually we supposed—we were supposed to have brought it in three months after sale or after 3,000 miles.

The Court: He brought it in after 4,000.

Q. Did you personally drive the car to Woodbridge Dodge for this check-up or servicing and drive it home? (7) A. Yes.

Q. That was on December 2nd, 1971? A. Yes.

Q. Did you operate the car on December 3, 1971? A. Yes.

Q. Can you tell us what time of the day or night you operated the car? A. My wife drove it during the day.



*Francis J. Langford, Plaintiff, Direct*

Q. When did you personally use it on December 3rd?  
A. About quarter to seven at night.

Q. Did you take the car from your house and drive it somewhere? A. Yes.

Q. Who was with you? A. My son.

Q. Is that your son Frank? A. Yes.

Q. Where were you going on that evening about quarter to seven? A. Christian Pentecostal Church on Richmond Road about 7 miles from my house.

Q. Did you drive the 7 miles to the church from your home? A. Yes.

Q. What happened at the church? (8) A. Nothing, we were having a Ranger's meeting, Boy Scouts.

Q. How long did you stay with him at the church?  
A. The whole time.

Q. How long was that? A. Until nine-thirty.

Q. During that period of time from the time you got to the church to the time you left, what were you personally doing? A. Watching the kids play basketball.

Q. At nine-thirty that evening did you leave the church with your son to drive home? A. Yes.

Q. Where was your son sitting in the car? A. Right-hand passenger seat.

Q. Tell us what route you took when you started to drive home? A. Richmond Road to Clove Road on to the Staten Island Expressway toward Victory Boulevard exit, going to Travis West.

Q. That would be toward New Jersey? A. Yes.

Q. Can you describe Victory Boulevard for us at the point where you got off the expressway? How wide is it?  
A. Four lanes, four lanes in each direction including the parking lanes.

(9) Q. Is the road divided in any way? A. A white line in the center.

Q. Something happened to you on Victory Boulevard, did it not? A. Yes.

*Francis J. Langford, Plaintiff, Direct*

Q. How long after you got off the expressway did something happen? A. About ten minutes.

Q. And how much distance had you travelled on Victory Boulevard at that point? A. About three miles.

Q. Sir, is Victory Boulevard controlled by traffic lights between the time you got on it until the time something happened to you? A. Just two lights.

Q. Had you stopped and started for these lights or been stopped by these lights? A. Yes.

Q. Had you crossed an intersection at some particular crosswalk immediately before this incident happened? A. Not really.

Q. Did there come a point when there was an accident involving your car? A. Yes.

Q. Can you tell us what that point was between (10) streets? A. About 700 feet past Cannon Avenue.

Q. After you had gotten west of Cannon Avenue? A. Yes.

Q. What would the next intersection be? A. Leroy, about 150 feet short of that.

Q. As you crossed Cannon Avenue how fast were you going? A. About 30.

Q. Was the street straight? A. Yes.

Q. Was the road paved? A. Yes.

Q. Was there any other traffic immediately in front of you? A. No.

Q. As you got about 700 feet past Cannon Avenue did something happen? A. Yes.

Q. Tell the Judge what happened? A. I heard a loud snapping noise in the right front of the car and then I couldn't control it anymore and it kept going to the right and hit another car parked there, and passed that car off the road into a retaining wall.

(11) Q. You heard a loud snapping noise and your car hit another car? A. Yes.

*Francis J. Langford, Plaintiff, Direct*

Q. Can you describe to us how it hit it? A. It hit the left rear of the car, dragged all the way to the left front of the car on the left and my car kept bearing to the right.

Q. Did you try to pull your car to the left? A. Yes.

Q. Did it turn at all? A. No, the wheel turned but—

Q. But the tires didn't respond? A. No.

Q. Tell us at what angle you went to your right after you went past this car? A. About 45 degrees.

Q. What happened then? Was there a curbing there? A. Yes.

Q. Did you mount the curb? A. Yes.

Q. Then what happened? A. I hit a retaining wall and a pole too.

Q. What kind of a pole? A. Utility pole, Con Edison, wooden pole.

(12) Q. Where did your car finally come to a rest? A. On the retaining wall, against the pole, too.

Q. Was the front end of the retaining wall? A. Yes.

Q. Had your car responded at all when you tried to pull to the left during this period of time? A. No.

Q. About how long did this whole incident take? A. A couple of seconds.

Q. As a result of this impact did something happen to your son? A. Yes.

Q. Would you tell us what happened? A. He was sitting in the front seat and he went under the dashboard and smacked up the right side of his face. It was all swollen, he split his lip and chipped a couple of teeth.

Q. What happened after that? Did the police come? A. The police came and then the ambulance came right away and took him to the hospital.

Q. Which hospital did they take him to? A. St. Vincent's Hospital in Staten Island.

Q. Where did you see your car again after this incident? (13) A. Next morning.

*Francis J. Langford, Plaintiff, Direct*

Q. Where was it at that time? A. Still in the same spot, on the retaining wall.

Q. Was the car thereafter towed away? A. They had it towed away.

Q. You saw someone tow it away? A. Yes.

Q. Did you see somebody after the car was towed away? A. No.

Q. Did you thereafter make an attempt to find out what had happened to your car on that evening? A. Yes.

Q. Did you talk to somebody about it? A. I talked to my lawyer, Mr. Nolan.

Q. As a result of that conversation with Mr. Nolan, did you do something? A. Yes, I did.

Mr. Ausubel: We're getting to something post-accident based upon conversation with the lawyer and I think it's highly improper.

Mr. Kaplan: I am entitled to show the conversation between him and his expert.

The Court: What did he do?

(14) Q. Did you do something then? A. Yes, I got in touch with Mr. Nolan.

Q. After that what did you do? A. He arranged—

The Court: No, what did you do?

The Witness: I didn't do anything.

Q. Did you send a check or some money to somebody? A. Yes.

The Court: That's leading. Listen to your lawyer's questions.

Don't tell us about conversations.

Q. What did you do? A. I left it in the lawyer's hands.

Q. Did you at some time get in touch with the Amman Testing Laboratory? A. Yes.



*Francis J. Langford, Plaintiff, Direct*

Mr. Ausubel: At this point I object to whether he did or didn't. It's immaterial.

The Court: It's not material at this point.

Mr. Kaplan: I expect to tie it up as to what he himself did.

The Court: Just the fact he got in touch with them.

Mr. Kaplan: I want to show more than that.

The Court: I will rule on your questions as you pursue it.

Q. Did you send Amman Testing money?

Mr. Ausubel: If your Honor please—

The Court: Money doesn't know anything.

Q. Did you hire or ask Amman Testing to do something for you? (16) A. Yes.

Mr. Ausubel: This is based on a conversation.

The Witness: I never talked to them.

Mr. Graff: I object on the ground that these are leading questions.

The Court: I suppose they are leading except there is no jury involved really, so we'll get down to the nub of the issue in any event.

Mr. Graff: Except he's telling the witness what to say.

Q. After the car was towed away from that point did you see it again? A. No.

Q. What about your son? Tell us what happened to your son after this accident? A. He spent about ten days in the hospital.

Q. How did he go from the scene of the accident to the hospital? A. Ambulance, St. Vincent Hospital ambulance.

Q. Was he taken to the hospital that evening? A. Yes.

*Francis J. Langford, Plaintiff, Direct*

Q. How long did he stay in the hospital? A. Ten days.

Q. Did you see him in the hospital every day? (17)

A. He had stitches in his lip and whole side of the face was completely swollen out.

Q. You're indicating the right side of your face; is that the part of the boy's face you are referring to? A. Yes.

Q. Did you see what the doctors did to him, if anything, while he was in the hospital? A. They stitched him up and had him in ice packs trying to keep the swelling down.

Q. After he came home from the hospital was he treated by any physician? A. Yes.

Q. Who was he treated by? A. Dr. Costantino.

The Court: No relation.

Mr. Kaplan: He doesn't spell it the same way.

Q. How many times did you take the boy to see Dr. Costantino? A. Three times.

Q. Besides that, was he taken to anybody else? A. No, the dentist.

Q. Which dentist was that? A. Dr. Leventhal.

(18) Q. Does the boy still have any visible signs of the injury to his mouth, face or teeth? A. Yes.

Q. Can you show it to us? Would you go up there, son? A. Scar on his lip here and he has three chipped teeth when he reaches the age of 16.

Mr. Ausubel: I move to strike out any evaluation he has made.

Mr. Kaplan: Show us the teeth.

The Court: Is he getting on the witness stand?

Mr. Kaplan: He is eight years old.

The Court: That doesn't make any difference.

Q. Did he lose any time from school as a result of this? A. Yes, three weeks.

*Francis J. Langford, Plaintiff, Cross*

Q. Which school was he attending? A. Public School 26.

Q. How old was the boy at the time of the accident? A. Six—seven.

Mr. Kaplan: You may inquire.

*Cross Examination by Mr. Ausubel:*

(19) Q. Mr. Langford, I think I heard you say that at some time after this accident that you consulted a lawyer by the name of Nolan. A. Yes.

Q. How long after this accident did you consult Mr. Nolan? A. About ten days.

Q. But right after the accident happened there was a police officer who came right to the scene of the accident, isn't that correct? A. Yes.

Q. This was within a matter of a couple of minutes after the accident? A. Yes.

Q. When the police officer came to the scene of the accident you spoke to the police officer, did you not? A. Yes.

Q. You told him your complete version as to how this accident happened, didn't you do that? A. Yes.

Q. Did you ever tell the police officer at the scene of the accident that you heard a knocking noise in the right front of the car? A. I told him I heard a snapping noise.

(20) Q. Did you tell the police officer that you heard a snapping noise in the right front of the car before you impacted the automobile? A. Yes, sir.

Q. Did you tell the police officer that you had some steering trouble with that car at any time before you collided with the automobile or retaining wall? A. Yes.

Q. You told him that? A. Yes.

Q. That's your recollection today? A. Yes, sir.

*Francis J. Langford, Plaintiff, Cross*

Q. Do you recognize the police officer that you saw at the scene? A. No.

Mr. Ausubel: Officer D'Angelo, will you stand up and please come forward, sir? Do you recognize this gentleman here as being the police officer coming to the scene of the accident within minutes after the accident, and with whom you spoke?

The Witness: I don't recognize him.

Mr. D'Angelo: Police Officer John D'Angelo, 11 Continental Place, Staten Island.

(21) Q. Let me take you back to July of 1971. You went to Woodbridge Dodge to buy this automobile, is that correct? A. Yes.

Q. This—did this car come equipped with regular or power steering? A. Regular.

Q. Do you have the bill of sale that you got? Do you know the difference between regular and power steering? A. Yes.

Q. You know power steering is regular steering with a power assist? A. So I have heard.

Q. Don't you know that as a driver with 12 years' experience? A. I have drove cars with power steering that didn't have it.

Q. When you went to the dealership in July of '71 and you bought this car, didn't you discuss what mechanical features were going to come with this car? A. Not really.

Q. You didn't talk about whether or not the car would come with power steering and power brakes? A. Yes, I asked if they had it and they said no.

Q. You wanted power steering? (22) A. No, I didn't want power steering.

Q. You wanted regular steering? A. Yes.



*Francis J. Langford, Plaintiff, Cross*

Q. And you told them that? A. Yes.

Q. What about the brakes? What did you tell them about that? A. Just regular brakes.

Q. Where is that bill of sale?

Mr. Kaplan: You have a copy of it.

You have a copy of it.

Mr. Ausubel: You have it. I want the original bill of sale.

Q. Did you get another piece of paper when you bought the car in which they enumerated the various features of that car on that bill of sale? A. I'm not sure.

Q. Your lawyer has given me a copy of a piece of paper but it doesn't have any enumeration of the mechanical features of this car. Do you see this document? A. Yes.

Q. Didn't you tell—didn't you get a bill of sale at the time you bought the car which indicated the mechanical features of the car? (23) A. No.

Q. Is this the only document you say you got? A. There were other forms, receipts, giving them the money, maintenance books, guarantee, financing papers.

Q. I'm talking about a document which would describe the various mechanical features of the car. A. No.

Q. Let me show you other papers from the dealer. Did you get a document similar to this? A. Yes.

Mr. Ausubel: I offer this in evidence.

Mr. Kaplan: I object to this. There is—he might have gotten a document similar to this but there is no indication that this is the car he bought. There is nothing in the papers to show it.

The Court: Let me see it.

Mr. Ausubel: If your Honor please—

The Court: Go ahead, I'm listening.

Mr. Ausubel: Well, I will withdraw that offer.

*Francis J. Langford, Plaintiff, Cross*

Q. On July 9, 1971 didn't you get this document from the dealer where you bought the car among other papers?  
A. Yes.

(24) Mr. Ausubel: Now I offer this document in evidence.

Mr. Kaplan: I have no objection.

The Clerk: Bill of sale marked in evidence as Defendant's Exhibit A.

(So marked.)

Q. When you got this defendant's Exhibit A, did you not see that car equipped with power steering? A. The car certainly didn't feel like it.

Mr. Ausubel: I move to strike it out as not responsive.

The Court: Not responsive.

Q. And you didn't know that for the—almost five months that you used the car that this car came equipped with power steering? A. No.

Q. You didn't know at once? A. No.

Q. After you took the car out you drove it home, is that right? A. Yes, sir.

Q. And you say it came equipped with some kind of a booklet? A. Yes.

Q. This booklet suggested periodic servicing of (25) the vehicle? A. Yes.

Q. It was suggested to you the first time you should bring in the car for service would be three months after sale or 3,000 miles, whichever event first occurred? A. Yes.

Q. Now, you had this automobile at your home in Staten Island, is that right? A. Yes.

Q. And your wife drove the car? A. Yes.

*Francis J. Langford, Plaintiff, Cross*

(26) Q. About how many miles would you say your wife put on the car during the time this car functioned? A. About 3,000.

Q. About how many miles would you say you put on the car? A. About 1,000.

Q. At the time you brought the car in the day before this accident it had 4,412 miles on it, is that correct? A. Yes.

Q. During the time that you had the car between July 9th, 1971 and December 2nd, '71 I suppose you drove the car at different speeds? A. Yes.

Q. Your personal experience? A. Yes.

Q. About how high would you travel at any given time? A. Seventy.

Q. You would have occasion to manipulate the steering wheel during this time? A. Yes.

Q. Turn to the left? A. Yes.

(27) Q. Did you ever have any trouble at all steering the car at a speed of 70 miles an hour? A. No.

Q. Did you ever hear any noise or knock from the car? A. No.

Q. Or any screech of brakes? A. No.

Q. Any screeching from the tires? A. No.

Q. Even the slightest noise from the car, any unusual noise? A. No.

Q. Was there ever an occasion during this five month period of time when you steered this car to the left or right where it didn't respond in accordance with your maneuver? A. No.

Q. Apart from driving within Staten Island, did you drive it outside of Staten Island? A. Yes.

Q. Like where? A. Pocono Mountains.

Q. Did you drive up and down mountains? (28) A. Yes.

Q. During the time you drove it up and down mountains, did you also drive under circumstances where it was uneven terrain conditions? A. Yes.

*Francis J. Langford, Plaintiff, Cross*

Q. When you drove it up and down mountains or un-level terrain, did you have any trouble with the car? A. The steering, no.

Q. Any unusual noise? A. No.

Q. Did you ever have any trouble with the brakes of the car? A. No.

Q. Or the transmission of the car? A. No.

Q. Did your wife report to you any incident about a noise in the car? A. No.

Q. Ever report any difficulty in getting the steering wheel to work? A. No.

Q. To get it to respond? A. No.

Q. Then there came a time, you say, when you brought (29) the car back to the dealer. A. Yes.

Q. This was the very night before this accident, is that correct? A. Yes.

Q. This was for the first service check? A. Right.

Q. In preparation for that service check you wanted to get a list of all complaints you had about the vehicle, is that right? A. Yes.

Q. Then you drove to the dealer? A. Yes.

Q. When was it that you drove it to the dealer on December 2nd, '71? A. About five-thirty.

Q. In the evening? A. Yes, sir.

Q. How long was the car in the dealership the day before this accident? A. About two hours.

Q. So that would be until seven-thirty. A. Yes.

Q. How far was the Woodbridge Dodge from your home? (30) A. Yes.

Q. How far was the Woodbridge Dodge from your home? A. About ten miles.

Q. You took it in about five-thirty and I suppose somebody came over to you and asked you what complaint you had about the car? A. Yes, sir.



*Francis J. Langford, Plaintiff, Cross*

Q. What did you tell them what was wrong with the car?

A. The glove compartment works right—didn't work right and I wanted it checked, it didn't seem to start in the morning.

Q. Anything else? A. That's all.

Q. Did you carry any tools or equipment in your glove compartment? A. Yes.

Q. Like what? A. Pair of pliers, wrenches, screw driver, flashlight.

Q. This was true on the date of the accident? A. Yes.

Q. When you went to the dealer did you tell him you had any trouble with your brakes? (31) A. No.

Q. Did you tell him you heard any unusual noises from the car? A. No.

Q. Did you tell him there was anything wrong or unusual with your tires? A. No.

Q. Did you tell him you had the slightest difficulty with the steering of the car? A. No.

Q. Didn't you sometimes discuss with the dealer before you bought the car about the fact this car came equipped with power steering? A. No.

Q. When you got the bill from the dealer didn't you look it over? A. I just looked at it. Didn't pay too much attention to it.

Q. Didn't you look at it to see the mechanical features of the car? A. No.

Q. Do you have any recollection now one way or the other as to what was written on the original bill of sale as to what kind of brakes were on that car? (32) A. No.

Q. You don't know for example, whether it was power or regular brakes? A. No.

Q. Then when you brought it into the dealer for this two hour check it was taken back into the work room? A. I guess so.

*Francis J. Langford, Plaintiff, Cross*

Q. You knew that, didn't you? A. I don't know what they did with it.

Q. Before the car was delivered to you in July of 1971, wasn't there a period of time between the time you ordered the car and the car was delivered to you? A. It was sitting in the parking lot.

Q. But there was an interval time between the time you negotiated the purchase of this car and the time it was actually delivered to you, isn't that a fact? A. Yes.

Q. Wasn't the car before it was delivered to you inspected and tested by the dealer.

Mr. Kaplan: I object unless he knows of his own knowledge.

The Court: Sustained.

Q. Did you know what the dealer did with the car between the time that you contracted to purchase it and the (33) time it was delivered to you? A. No.

Q. You never knew that there was a pre-delivery check of the car?

The Court: Sustained.

Q. Then you say you complained about the glove compartment, repaired that night. A. Yes.

Q. Then you took the car out about what time on December 2nd, 1971? A. Seven-thirty.

Q. And you drove home about ten miles? A. Yes, sir.

Q. Now the next day, was that a work day, the day of the accident? A. Yes.

Q. What day of the week was it? A. Friday.

Q. And you worked at Con Edison, at Travis in Staten Island? A. Yes.

The Court: We'll recess now until two o'clock.

(A luncheon recess was taken.)

*Francis J. Langford, Plaintiff, Cross*

United States Courthouse  
September 10, 1973  
1:00 P.M.

Appearances:

Marshall G. Kaplan, Esq., Attorney for plaintiff.

Markhoff, Gottlieb, Lazar, L'Auria & Maldonado, Attorneys for defendant, Woodbridge Dodge, Inc., By: Samuel Groff, Esq., of Counsel.

Emile Z. Berman & A. Harold Frost, Attorneys for defendant, Chrysler Motors Corp., By: Marvin V. Ausubel, Esq., of Counsel.

(3a) FRANCIS J. LANGFORD, resumed.

*Cross Examination by Mr. Ausubel (Cont.):*

Q. Mr. Langford, I think before luncheon recess we had gotten to the activities of the day of the, just to orient you a little. A. Yes.

Q. This was a week day, was it, the day of the accident? A. Yes, sir. Friday.

Q. And that day you got up to go to work that day, did you? A. Yes.

Q. About what time did you rise that day to go to work? A. Six o'clock.

Q. And you worked a full day, is that correct? A. Yes, sir.

Q. And after you worked the full day you ate your dinner? A. Yes, sir.

Q. And eventually you took your son to these activities, is that correct? (4a) A. Yes, sir.

Q. Now, you drove that evening from your home to this place, that Pentecostal Church, you said. A. Yes.

Q. I think you said, was it Port Richmond Road you said? A. Richmond Road.

*Francis J. Langford, Plaintiff, Cross*

Q. I am not too familiar with the streets in Staten Island.

The Court: I am familiar.

Q. In the course of which I think you drove, I think you said, seven miles. A. Yes.

Q. That included driving on the Staten Island Expressway? A. Yes.

Q. That is a high speed roadway, isn't it? A. Yes, sir.

Q. How fast were you driving to this activity on the Staten Island expressway? A. About sixty miles an hour.

Q. As you were driving along on the Staten Island expressway to this activity, did you have occasion to manipulate the steering wheel? (5a) A. Yes.

Q. Did you find anything unusual with the operation of the steering wheel at sixty miles an hour? A. No.

Q. Hear even the slightest noise or screech of any kind? A. No, sir.

Q. You were driving with your windows closed? A. Yes.

Q. Did the car come equipped with seat belts? A. Yes, sir.

Q. Front and rear? A. Yes, sir.

Q. It was sometime around nine-thirty in the evening that you were starting back for home? A. Yes, sir.

Q. You eventually went back on that Staten Island expressway, is that correct? A. Yes, sir.

Q. That was within three miles of your exit? A. Yes, sir.

Q. On Victory Boulevard, is that correct? A. Yes, sir.

Q. Were you then traveling again about sixty miles an hour? (6a) A. Yes, sir.

Q. Did you experience anything unusual of the slightest nature? A. No.



*Francis J. Langford, Plaintiff, Cross*

Q. In terms of the brakes or the steering while you were driving, going back towards home? A. No.

Q. Now, did you drive with your head lights on? A. Yes.

Q. And was the weather clear out at the time? A. Yes, sir.

Q. Then you got off at Victory Boulevard, is that correct? A. Yes, sir.

Q. About what time was that? A. About twenty to ten.

Q. And were you driving with your windows open or closed? A. Closed.

Q. Now, when you got on to Victory Boulevard, was this a substantially straight stretch of roadway? A. Yes.

Q. Going in a westerly direction? A. Yes, sir.

(7a) Q. And was traffic light out at the time? A. Yes, sir.

Q. Were your headlights on at the time? How far could you see ahead of you as you drove along Victory Boulevard? A. Two hundred feet.

Q. Were you watching your speedometer? A. No.

Q. Now then, you got to a point where you had approached or traversed the intersection of Victory Boulevard and I think you said Cannon, is it Street or Avenue? A. Avenue.

Q. Avenue.

And that was the block before Leroy Street or Avenue, correct? A. Yes, sir.

Q. Now, at that point had you looked at your speedometer at all as you passed that intersection? A. No.

Q. And what do you say now is the best estimate of your speed as you passed Cannon on route to Leroy going on Victory Boulevard? A. Thirty miles an hour.

Q. Now, then, you were driving close to the (8a) center of the road? A. Yes, sir.

*Francis J. Langford, Plaintiff, Cross*

Q. You say there was a white line down the center of the road, is that correct? A. Yes, sir.

Q. And you drove about how many feet before you say you heard this noise?

I am talking about past Cannon on Victory Boulevard.  
A. About seven hundred feet.

Q. Now, did you sense any shimmy or shake of the car at any time before this accident? A. No.

Q. Now, then, after you had heard the loud noise did you apply the brake? A. Yes, sir.

Q. Did you have your feet on the brake from that point until the time that you smacked into the retaining wall?  
A. Yes, sir.

Q. Now, when you applied your foot on the brake was this before you struck that car that was parked along the side of the road? A. It happened so quick, I am not sure.

(9a) Q. Well, when you felt the car going to the right, didn't, wasn't it instinctive that you went for the brake?  
A. Yes, sir.

Q. Do you have any recollection as to whether you put your foot on the brake before you hit that car? A. I am not sure.

Q. How many feet did you travel from the time you say you heard that noise until the point you struck that car?  
A. Ten feet.

Q. You have no recollection whether in that ten foot distance you applied the brake, is that correct? A. I am not sure.

Q. Now, were you turning the steering wheel to the left?  
A. Yes.

Q. Before you struck that car? A. No. No.

Q. Now, when you struck that car did you strike that car with the right front section of your car? A. Yes, sir.

Q. And was that collision a violent collision? A. Yes, sir.

*Francis J. Langford, Plaintiff, Cross*

(10a) Q. And at degree angle did you strike that car?  
A. About forty-five.

Q. And was that the initial point of impact with the parked car, was that the left rear portion of the car? A. Yes, sir.

Q. Now, after this violent collision between your right front and the left rear, did your car then continue along in a westerly direction? A. Yes.

Q. And did you continue to strike the entire left side of that parked car? A. Yes, sir.

Q. And were all of those impacts along the entire left side of the parked car violent impacts? A. Yes, sir.

Q. And there was extensive damage to the entire left side of parked car? A. Yes, sir.

Q. Now, all during that time did you apply your foot on the brake? A. Yes, sir.

Q. And when you applied your foot on the brake did your brake respond? (11a) A. Yes, sir.

Q. Did you apply it all the way down to the floor of the car? A. Yes, sir.

Q. Did that reduce the speed of your car? A. Yes, sir.

Q. To what? A. About twenty miles an hour.

Q. Did it get it even less than twenty miles an hour?  
A. No.

Q. Well, how long was that parked car? A. Ten feet.

Q. Ten feet. Could it have been longer? A. I guess possibly twelve feet.

Q. What kind of a car was that? A. Chevelle. Sixty-four Chevelle.

Q. Was there another car in front of the Chevelle? A. No.

Q. How many cars did you strike before you went on the sidewalk? A. One.

*Francis J. Langford, Plaintiff, Cross*

Q. Did you ever tell anybody that you strue' two cars before you went on the sidewalk? (12a) A. No.

Q. Did you ever tell that to the American Standards testifying before you? A. No.

Q. Did you ever tell that to your lawyer, Mr. Nolan, who is seated here in the Court? A. Yes.

Q. That you struck two cars? A. I just tapped one.

Q. I didn't ask you that. I asked you if you struck two cars. A. Yes.

Q. Did you ever tell Mr. Nolan that you struck two cars? A. Yes.

Q. Now, where was the second car located that you struck with respect to the first car? A. About fifteen feet ahead of it.

Q. That is to say that the rear of the second car was fifteen feet in front of the front of the Chevelle, is that correct? A. Yes, sir.

Q. Now, after you struck the first car with your right front you then continued at what angle striking (13a) the parked car, the Chevelle? A. Forty-five degrees.

Q. Throughout the distance of the Chevelle? A. Yes, sir.

Q. And all during that time were you turning the steering wheel to the left? A. Yes, sir.

Q. Was the steering wheel turning to the left as you turned it to the left? A. Yes.

Q. And wasn't the left front wheel turning to the left as you were turning it to the left? A. I couldn't see it.

Q. You couldn't see the left front wheel of your car which was ahead of you? A. I was driving the car. How can I see the wheel?

Q. I understand.

When you turned the steering wheel to the left, did the wheel, the steering column itself, rotate to the left? A. Yes, sir.



*Francis J. Langford, Plaintiff, Cross*

Q. And didn't the left front wheel then respond and turn to the left? A. No.

(14a) Q. You say it didn't respond? A. I couldn't see the wheel. All I know is it kept going to the right.

Q. Do you know one way or another now whether the left front wheel was responding as you were turning the steering wheel to the left? A. I don't know.

Q. But there was freedom from movement of the steering wheel, is that correct? A. Yes, sir.

Q. Now, after you passed the Chevelle did you continue to have your foot on the brake? A. Yes, sir.

Q. And did you continue to turn that steering column to the left? A. Yes, sir.

Q. Now, there was a vacant space of fifteen feet, is that correct? A. Yes, sir.

Q. And in what direction did your car then proceed during that fifteen feet of vacant space between the front of the Chevelle and the rear of the second car? A. Forty-five degree angle. It was a right curve.

Q. For what distance did your vehicle travel on (15a) the road after it passed the Chevelle and before it mounted the sidewalk. A. About fifteen feet.

Q. And what part of your car struck the second car? A. My rear, right rear.

Q. Right rear? A. Left rear.

Q. Struck what? A. A little Volkswagen.

Q. Now, as you were proceeding along the roadway at a forty-five degree angle, this car, this Chevelle, was parked up against the curb to your right? A. Yes, sir.

Q. When you had passed the front of the Chevelle at a forty-five degree angle within that fifteen feet distance you would go up on the sidewalk, is that correct?

Mr. Kaplan: I am going to object to the question as argumentative.

*Francis J. Langford, Plaintiff, Cross*

The Court: It is argumentative.

Q. Was the second car parked legal with the curb to your right, the Volkswagen? A. Yes.

Q. Now, what part of the Volkswagen did you strike? (16a) A. The bumper.

Q. Which bumper? A. Right rear bumper.

Q. Now, as you were traveling that fifteen foot distance on the roadway turning your steering wheel to the left, with your foot on the brake, after you had impacted the Chevelle, how fast did you say your car was driving? A. About twenty miles an hour.

Q. Did you watch your speedometer then at all? A. No.

Q. Now, for what distance did you then continue to travel beyond the Volkswagen before you struck the retaining wall?

Mr. Kaplan: There is no testimony that he continued beyond the Volkswagen, your Honor.

The Court: Not at this point, anyway.

Mr. Ausubel: Withdrawn.

Q. After your car came into collision with the Volkswagen, for what distance did your car continue to travel before you struck the retaining wall? A. Well, I hit the retaining wall first before I hit the Volkswagen.

Q. Well, let me ask you this: for what distance (17a) did you travel after you struck the Chevelle? Beyond the front of the Chevelle, before you struck the retaining wall? A. About fifteen feet.

Q. Was it ever your recollection that you had traveled at least twenty-five feet beyond the point of the Chevelle and before you struck the retaining wall? A. It's possible it was more.

Q. Is it possible that you traveled at least thirty-five feet beyond that Chevelle and before you struck the retaining wall? A. No.

*Francis J. Langford, Plaintiff, Cross*

Q. Is it possible that you went between twenty-five and thirty-five feet? A. I would say between fifteen and twenty-five feet.

Q. You remember you appeared at our office back on April 26, 1973 with Mr. Kaplan, your lawyer, to give testimony in this case, sir? A. Yes, sir.

Q. You remember you were then sworn to tell the truth? A. Yes, sir.

Q. Eventually your testimony was recorded in book form, is that correct? (18a) A. Yes, sir.

Q. You had an opportunity to read it over and make corrections to this transcript? A. Yes, sir.

Q. Eventually you swore to its contents again on May 22, 1973, is that right? A. Yes, sir.

Q. You have been going over his transcript before you testified here today, is that correct, sir? A. Yes, sir.

Q. How many times would you say you have read it over between the time that you gave the testimony and now? A. Twice.

Q. Now, you remember on that day I asked you this question at page fifty, line three, "How far westward did you travel beyond the Chevelle?" Answer, "About twenty-five feet."

Do you recall saying that? A. I have no tape measure.

Mr. Kaplan: If your Honor please, I am going to object to this.

The Court: That is kind of a nebulous way of doing it.

(19a) Q. Now, you mounted a sidewalk and how high was the curb that you mounted before you got to the retaining wall? A. About four inches.

Q. And so did your entire car mount that four inch curb? A. My front did, my back didn't.

Q. All right. Your front part did. A. Yes.

*Francis J. Langford, Plaintiff, Cross*

Q. Then it headed toward the retaining wall, is that correct? A. Yes.

Q. Now, what part of your vehicle initially collided with the retaining wall? A. My right front.

Q. And was that collision the initial collision with the retaining wall between your right front and the retaining wall a violent collision? A. Yes, sir.

Q. What was the width of that retaining wall? A. The width? Eleven inches, cinder block.

Q. Did it have a brick post at the edge of it? A. Yes.

Q. Did the right front of your car smash into (20a) that brick post? A. Yes.

Q. Did it knock it over completely? A. Yes.

Q. And push it into the lawn? A. Yes.

Q. How far did it push that brick post into the lawn beyond its normal bearings? A. About a foot.

Q. Did you also knock out some of the bricks in the wall? A. Yes, sir.

Q. How many bricks did you knock out of the wall? A. Two.

Q. And after that did your car then mount the retaining wall? A. Yes, sir.

Q. And did that include the right front undercarriage? A. Yes, sir.

Q. And was the collision then with the retaining wall a violent one? A. Yes, sir.

(21a) Q. And is it fair to say that the entire right front undercarriage was smashed at that point? A. Yes, sir.

Q. And your hood was sprung, is that correct? A. Yes, sir.

Q. And your ignition key was stuck into the normal position, isn't that right, and damaged? A. Yes, sir.

Q. Your car was a total wreck from these impacts, isn't that right? A. Yes, sir.



*Francis J. Langford, Plaintiff, Cross*

Q. Did you hear a loud noise when you struck the car? A. Yes, sir.

Q. And did you hear a loud noise when you struck the wall? A. Yes, sir.

Q. And eventually how much of the right front undercarriage was lodged on top of the retaining wall? A. About three feet.

Q. And where was the left front at that time when three feet of the right front section of your undercarriage was on top of the retaining wall? A. It was hanging up in the air.

(22a) Q. Was it on the wall? A. No. The front bumper, the front left bumper, was touching the wall.

Q. Now, is it a fact that it was the collision with the retaining wall that caused the car to stop? Isn't that a fact? A. Yes, sir.

Q. Now, what happened to the motor when your car smashed into the retaining wall?

Mr. Kaplan: You mean, did it keep going?

Mr. Ausubel: No, in terms of any physical damage to the motor.

A. I guess so.

Q. Other than guessing, do you know whether your motor was all smashed from the impact? A. I don't know for sure.

Q. Eventually you looked at it, didn't you? A. No.

Q. You never looked at that part of the car after the accident? A. No.

Q. Do you recall in this examination before trial I asked you this question at page 68, line 21, "Question: Was the motor damaged. Answer: Oh, yes. Question: (23a) Smashed? Answer: Yes."

Do you remember being asked those questions and giving those answers under oath? A. That is what I said. It must have been. I was rushing my kid to the

*Francis J. Langford, Plaintiff, Cross*

hospital. I wasn't going to get a flashlight and look into the motor.

Mr. Ausubel: I move to strike those comments.

The Court: The rest is not responsive.

Q. Now, after the accident you had occasion to look at your car on top of that retaining wall, is that correct?

A. Yes, sir.

Q. And at that time when you looked at it didn't you see damage to the undercarriage and the motor including the tie rod being bent underneath there? A. Yes.

The Court: Do you know what a tie rod is?

The Witness: Yes, sir.

Q. I show you these pictures, these two photographs. Don't those two photographs fairly and accurately represent the damage to the undercarriage that you saw as it was on the top of the retaining wall? A. Yes, sir.

Q. That was on the morning following this accident, (24a) is that correct? A. Yes.

Mr. Ausubel: I offer these two photographs in evidence.

Mr. Kaplan: I have no objections.

The Clerk: Two photographs marked in evidence as Defendant's Exhibits B and C.

(So marked.)

Q. Now, Mr. Langford, you indicated--

The Court: Can I see those photographs?

Mr. Ausubel: I am sorry, your Honor.

The Court: All right.

Q. You indicated that in addition to striking the retaining wall you also collided with a utility pole, is that correct? A. Yes, sir.

Q. Was that up on the sidewalk? A. Yes, sir.

*Francis J. Langford, Plaintiff, Cross*

Q. Was that a violent collision with the utility pole?  
A. Yes, sir.

Q. What part of your car was in contact with the utility pole? A. Driver's door. The left hand door.

(25a) Q. Now, was it after you struck the retaining wall that you struck the Volkswagen? A. Yes.

Q. Now, did your car, did some part of your car ricochet after it struck the retaining wall? A. The back must have swung over and hit this Volkswagen.

Q. Did you see the collision with the Volkswagen? A. No.

Q. Now, what part of your car was in contact with the Volkswagen, if any? A. Left rear.

Q. Now, your car remained there overnight, is that correct? A. Yes, sir.

Q. And while you were at the scene you said the police had come right after the accident, is that correct? A. Yes, sir.

Q. And then you came to the scene the following morning, is that right? A. Yes, sir.

Q. And a tow wrecker had removed the car from the scene to someplace in Stapleton, Staten Island, is that right? A. Yes, sir.

(26a) Q. Was it taken by some wrecker? A. Yes.

Q. And did you see how the wrecker took the car from the scene? A. He picked up the front and towed it back.

Q. Was this by chains? A. Yes and a big bar.

Q. And you don't know what happened to the car after that, is that correct? A. That's right.

Q. Did you have a seat belt on before this accident on route home? A. No.

Q. Did your son? Did you tell your son to put a seat belt on? A. No.

The Court: That is also the problem. Can we agree in any event that the seat belt has anything

*Francis J. Langford, Plaintiff, Cross*

to do with the happening of the accident? It has something to do with the mitigation of damages. I can't see how a seat belt could stop an accident. I can see how it may, I don't see how it does. It may prevent some type of an injury. It has also been my opinion, I can't see it any (27a) other way.

Mr. Kaplan: I don't know that the appellate division and the Second Department is agreeing with your Honor.

The Court: I don't know that either.

Q. Now, your son went back to school within three weeks after this accident, is that correct? A. Yes.

Q. He's been attending school regularly since then, is that right? A. Yes, sir.

Q. As far as his facial condition was concerned it's a fact that it returned to normal, that its appearance returned to normal after the accident? A. After about six months.

Q. And he saw Dr. Cosentino three times within the first month after the accident? A. That's right.

Q. He was then seven years old? A. Yes, sir.

Q. Incidentally, how high above the level of the street was the retaining wall? A. Two foot, four inches.

Q. So that the right front section of your car (28a) mounted this two foot, four inch retaining wall, is that correct? A. Yes, sir.

Q. That is after it struck the brick post, is that correct? A. Yes.

Q. And after it knocked out those two bricks, is that correct? A. Yes, sir.

*Cross Examination by Mr. Groff:*

Q. Mr. Langford, after your car crashed into the retaining wall, did it get stuck there between the retaining wall and the pole? A. Yes.



*Francis J. Langford, Plaintiff, Cross*

Q. You say after it got struck it then struck the Volkswagen? A. The back must have swung over after, striking the Volkswagen. I didn't know about it until the next morning.

Q. Were you conscious of any impact between your car and another when it struck the retaining wall? A. No.

Q. When did you first find out there was an accident with the Volkswagen? (29a) A. The next morning.

Q. How did you find that out? A. One of the neighbors told me about it.

Q. You didn't find that out after you got out of the car that very day of the accident? A. No.

Q. Mr. Langford, you say you were going about thirty miles per hour when you first heard this snapping sound? A. Yes.

Q. Then your car veered to the right, is that correct? A. Yes.

Q. It went how many feet before it hit the Chevelle? A. It happened almost instantly.

Q. About how many feet did it go before it hit the Chevelle? A. Five feet.

Q. Do you recall when for the first time you put your foot on that brake after you heard that snapping sound? A. As soon as I heard the snapping noise I started to reach for the brake.

(30a) Q. That was before your car struck the Chevelle or simultaneously? A. Yes.

Q. You say you struck that brake hard? A. Yes.

Q. When your car hit the Chevelle did it slow down at all? Did the impact of striking the Chevelle slow your car down at all? A. A little bit.

Q. Your car travelled the entire length of the Chevelle which was about another ten or twelve feet? A. Yes.

Q. Did you have your foot on the brake all this time? A. Yes.

*Francis J. Langford, Plaintiff, Cross*

Q. Your car went another twenty-five feet before it passed the Volkswagen? A. Something like that.

Q. Then it mounted up on to the sidewalk and went into the retaining wall? A. As soon as I passed the Chevelle I went up—between the Volkswagen and the Chevelle. There was a driveway there. The Volkswagen was parked past the driveway.

Q. How many feet past the Chevelle did you travel (31a) before you went on to the sidewalk? A. Fifteen feet. Twenty feet.

Q. If I ask you on that examination before trial that we had once before and at that time you said on page fifty, "Question: How far westward did you travel beyond the Chevelle?" You said, "About twenty-five." Would that be correct, about twenty-five feet? A. About.

Q. After you passed the Chevelle you mounted the retaining wall, how many feet did you have to travel on this roadway from the Chevelle to the retaining wall? A. About six feet.

Q. All this time you had your foot on the brake, is that correct? A. Yes.

Q. And you were pressing down hard on it? A. Yes.

Q. Now, that is five feet to the Chevelle, about twelve feet past the Chevelle along side the Chevelle rear, about twenty-five feet past the Chevelle and about another six feet to the retaining wall, which makes approximately thirty-eight feet you traveled after you heard the snapping sound and all this time you had your foot hard down on the brake? (32a) A. Yes.

Q. About how fast did you say you were going when you hit that retaining wall? A. About twenty.

Q. About twenty miles an hour?

So that with your foot down on that brake all these feet and having hit the Chevelle your car decreased in speed from about thirty miles an hour. Is that what you are telling us? A. I guess so.

*Francis J. Langford, Plaintiff, Cross*

Q. You knocked over a brick post and knocked over some of the bricks out of the retaining wall, climb up two or three feet on the retaining wall and knock the motor of the car back into the body.

Mr. Kaplan: It is argumentative and as far as the last part of the question about the motor going into the body, there is no proof of that.

The Court: That's right.

Q. Let me change the question. I will change the last part of the question to read: hard enough to smash the motor.

Mr. Kaplan: I am going to object to it as argumentative.

The Court: Did he say that?

(33a) Q. Mr. Langford, on page 68 do you recall being asked this question and giving this answer. "Question: Was the motor damaged? Answer: Oh, yes. Question: Smashed? Answer: Yes."

Now, was the motor smashed, Mr. Langford? A. It wouldn't run.

Q. Was the motor smashed, was that your answer? A. That is the way I answered it, anyway.

Q. Did you see the motor after the accident? A. No.

Q. On what did you base— A. I seen the undercarriage was all banged up.

Q. The undercarriage was smashed. Did you see the front part of the car? A. Yes, sir.

Q. Would you describe what you saw on the front part of the car after the accident. A. It was smashed up.

Mr. Groff: All right, I have no further questions at this time.

Mr. Kaplan: I have no further questions.

The Court: Step down, please.

Next witness.

*Kenneth Kuschell, for Plaintiff, Direct*

KENNETH KUSCHELL, called as a (34a) witness herein, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

The Clerk: State your name, sir.

The Witness: Kenneth Kuschell.

*Direct Examination by Mr. Kaplan:*

Q. Mr. Kuschell, are you employed by the Chrysler Corporation? A. Yes, I am.

Q. In what capacity, please? A. Materials engineer, analytical group, specification group, Chrysler Corporation.

Q. In connection with your employment with Chrysler are you familiar with the specifications and the composition of parts used in a 1971 Dodge Swinger? A. Yes, I am.

Q. And, more particularly, are you familiar with the composition and the functions and specifications with respect to ball joint sockets in the '71 Dodge Swinger? A. Yes, I am.

Q. Now, sir, did you, was delivered to you some parts by the firm of Berman and Frost or did it come to (35a) Chrysler Corp. for you to do something with? A. Yes.

Q. Are those the parts in the box? A. Yes, they are.

Q. All right. Would you take them out, please. A. Yes, sir.

Q. Now, on behalf of the Chrysler Corp. were you asked to do something to these parts or with these parts in connection with this lawsuit? A. Yes, I was.

Q. Would you please describe which parts you have there. A. What I have here is a tie rod assembly, which consists of a tie rod tube with two tie rod ends which include a tie rod stud, bearing seat and spring. And also clamps to hold the ends onto the tube.

Mr. Kaplan: Can we have that deemed marked in evidence, your Honor?



*Kenneth Kuschell, for Plaintiff, Direct*

The Court: All right, we will mark it later.

Q. What else did you get? A. We received also with this particular portion of the tie rod assembly, a stud with a bearing attached to it, also received two dust seal cups, two castellaed nuts and a spring. And a bearing seat.

(36a) Q. Now, do any of those parts fit into the right ball joint socket of a '71 Dodge Swinger? A. All of the parts except the dust seal and the nuts fit into this socket here.

Q. Can you show the Judge where the socket is. A. This would be what we refer to as the tie rod end cavity or socket.

Q. That is what fits into the ball joint? A. The ball joint fits inside of that.

Q. Are you familiar with what the Chrysler specifications are for such a unit? A. Yes, I am.

Q. Would you tell us what they are, please? A. The material for tie rod end is our material standard, 331 or 514 which related to SAE is SAE 1040 or 1040 steel.

Q. What is that? A. It is a medium carbon, plain carbon steel.

Q. Is that a unit of strength you are referring to? A. Not necessarily, it depends on what has been done previously to the part. This determines exactly what the strength of the part would be.

Q. What are all the specifications for strength (37a) of the part? A. This material is required to be heat treated to our process standard, four, which is a normal living condition.

Q. And how is that done? A. This is done by passing the part through a furnace at a temperature of fifteen or seventeen hundred degrees Fahrenheit and cooled in air.

Q. Are you familiar with the method of assembly of these cars after this process is done to the part you are holding? A. I am, to some extent.

*Kenneth Kuschell, for Plaintiff, Direct*

Q. Tell us, how is the part assembled? A. The end?

Q. Yes. A. First of all, this starts out as a bar product. In other words, a round bar and this end is forged to make the shape here and the cavity and so forth. There is some machining done on the inside of the part. Then, after that is done and the part is threaded on the end and run through the furnace in the normal lived condition and any machining is done afterward on this particular part, then after that is done, then the tie rod and the stud, the bearing, the cap and the spring are all inserted through (38a) the rear end of the tie rod, and the cap is put over the end and then this, the end of the tie rod end is spun over on to this cap to retain everything within the tie rod end.

Q. Is that done on a machine line bay? A. Yes, it is.

Q. Are all these steps that you are telling us about done with machines? A. Yes, they are.

Q. Now, with relation to the point where the part is heated or put through a furnace, how long after that is the piece of steel or the part put into the car by machine? A. Well, that could be anywhere from probably hours to days.

Q. I see. Now, when the piece comes out of the furnace what are the specifications for its strength, thickness and so on, if any? A. There is a requirement for hardness which exists for the body of the tie rod end and that is shown on the drawing for this particular part and it indicates I should have a Rockwell B reading in the area of Rockwell B 90 minimum number.

Q. Is Rockwell B a table of strength of hardness (39a) of steel? A. It could be related to strength, that's correct.

Q. In what context are you using it? A. Normally hardness is used to measure strength. It is a more convenient method of determining the strength of the material.

*Kenneth Kuschell, for Plaintiff, Direct*

Q. I see. Now, how many of these things are heated at once? Do you have any idea? A. Not all of them.

Q. Are some of them tested? A. Some of them are tested.

Q. Is there some percentage requirement? A. That I don't know.

Q. Do you know how many Dodge Swingers Chrysler built in 1971? A. No, I don't.

Q. Do you have any idea of any approximation? A. Oh, I would imagine anywhere from one hundred thousand, two hundred thousand.

Q. Those hundred to two hundred thousand, can you give us any approximation how many of these pieces of metal were tested after they were put in furnaces? A. I have no idea.

Q. After it goes through the furnace, who would (40a) normally handle it? A. It would be the manufacturing plant.

Q. In the plant? A. Yes, sir.

Q. Have you ever seen this process, Mr. Kuschell? A. No, I have not.

Q. In the course of your training with Chrysler have you ever been shown motion pictures of how this is done? A. No, I have not.

Q. What is your particular area of interest in the company? A. It is selection of materials and processes to the part which is being designed.

Q. And did you have something to do with selecting the process and design of this part? A. Not on this particular part, no, sir.

Q. Nothing at all? A. Not at all.

Mr. Kaplan: Excuse me for just one second, your Honor.

Q. Do you have any printed specifications or any drawings of the part with you, Mr. Kuschell? A. Yes, I do.

*Kenneth Kuschell, for Plaintiff, Direct*

(41a) Q. May I have them, please? A. Yes, you can. These are the material standards for the tie rod end. This is the material standard for the tie rod stud. This is the material standard for this particular part, the bearing cap, or the bearing seat.

Q. All right. The point thirty-seven and point forty-four per cent carbon is what now, the stud? A. Yes. Now there are two standards which are permitted for that particular car. There is an optional.

Q. They both refer to the same stud? A. They refer to the entire rod end itself, the forging.

Mr. Kaplan: May I offer these as one exhibit?  
Mr. Groff: No objection.

A. This is a copy of the engineer's drawing for the tie rod end and in the bottom right hand corner you will note the material standards, M S 331 and 514.

Mr. Kaplan: Then may I offer the drawing.

Mr. Ausubel: No objection.

The Clerk: So marked as Plaintiff's Exhibits 3 and 4.

(So marked.)

A. This sheet, MS 2485, refers to the material standard for the tie rod stud.

Mr. Kaplan: May I offer these two papers (42a) as one exhibit?

Q. Have I got all the papers? A. No, you don't.

The Clerk: So marked as Plaintiff's Exhibit 5-A.  
(So marked.)

Q. If you have some more papers can we have them?  
A. This is process standard 4, which covers the heat treatment for the tie rod end which is shown on the drawing for the tie rod end.



*Kenneth Kuschell, for Plaintiff, Direct*

Mr. Kaplan: This is three sheets. I will offer them as one exhibit.

The Clerk: So marked as Plaintiff's Exhibit number 6.

(So marked.)

Q. Would you please? A. We also have the drawing for the bearing, the tie rod end bearing and the material standard, MS 3414, and the process standard PS 8.

Mr. Kaplan: I offer these five sheets as one exhibit.

Mr. Ausubel: No objection.

The Clerk: So marked as Plaintiff's Exhibit number 7.

(43a) (So marked.)

A. We also have a drawing for the tie rod end seat which is this particular part here and this is covered by material standard MS67 and also by process standard 8 which you already have a copy of for the heat treatment.

Mr. Kaplan: I offer these three sheets.

The Clerk: So marked as Plaintiff's Exhibit number 8.

(So marked.)


Mr. Ausubel: No objection.

A. We also have the drawing for the steering knuckle tie rod end spring which is this particular part and the material standard MS 479 which covers the material for that particular part.

Mr. Kaplan: Three sheets. I offer them.

The Clerk: So marked as Plaintiff's Exhibit number 9.

(So marked.)



*Kenneth Kuschell, for Plaintiff, Direct*

A. Next I have two drawings, one of the assembly of the tie rod end which specifies or calls out all the part numbers which are relative to the drawings I already gave you and a drawing for it, the entire tie rod assembly.

Mr. Kaplan: All right. I offer these two (44a) sheets.

Mr. Ausubel: No objection.

The Clerk: So marked as Plaintiff's Exhibit number 10.

(So marked.)

Q. Do you have any more? A. No, no more.

Q. Now, Mr. Kuschell, did you do anything specifically—

Mr. Kaplan: Incidentally, Judge, can we consider these parts marked as if they haven't already been considered marked?

The Court: We'll mark them all.

Put it back in the box and we will mark the box.

Mr. Kaplan: Can we mark the box now?

The Court: Mark the box components of tie rod end and components. Call it tie rod end and components. Call it fractured tie rod end and components.

The Clerk: Fractured tie rod end and components marked as Plaintiff's Exhibit 2.

(So marked.)

Q. Mr. Kuschell, did you have anything specific to do with the designing of this part on the car? (45a) A. You asked me that and I said I did not.

Q. With reference to these parts, Plaintiff's Exhibit 2, did you do something with them specifically after you received them? A. Yes, I did.

*Kenneth Kuschell, for Plaintiff, Cross*

Q. Did you refer them to other members of the Chrysler Corp. for study or evaluation work or something of the kind? A. No, I did not. The part, as I received it, was from our steering and suspension laboratory.

Q. You have another gentleman with you here from Detroit? A. Yes, sir.

Q. Who is he? A. Mr. Morris Hassen.

Q. What is his function? A. He works in the steering suspension laboratory.

Q. As what? A. He is a, I believe he is a supervisor.

Q. To make it faster, Mr. Kuschell, is he more familiar with the design and function of this piece than you are? A. Yes.

Q. All right. That is what I wanted to know. (46a) A. Yes.

Mr. Kaplan: I have no further questions.

The Court: Any questions?

Mr. Ausubel: Yes, I do, your Honor.

*Cross Examination by Mr. Ausubel:*

Q. Mr. Kuschell, first you had an opportunity to examine these parts which are now Exhibit 2—

The Court: 2.

Q. —Plaintiff's Exhibit 2 for—in your laboratory, is that correct? A. That's correct.

Q. And under laboratory conditions? A. Yes, sir.

Q. And you had an opportunity to examine them for strength and durability and whether they conform with the specifications, is that correct? A. Yes.

Q. And did these parts as manufactured conform with all of the specifications for strength, durability and design?

Mr. Kaplan: If your Honor please, this is improper.

*Kenneth Kuschell, for Plaintiff, Cross*

The Court: This is outside the scope of (47a) direct examination.

However, you can make him your witness at this point and it would be as though you were calling him as your witness.

Mr. Ausubel: I think he covered it in direct. If you think he really didn't—

The Court: He went into how it was done. He didn't go into whether or not this part was specifically tested by him when he received it. We will take him as though you were calling him on your side and you won't have to call him back.

A. In answer to your question, yes.

The Court: I assumed you had no questions.

Mr. Kaplan: Of course, your Honor, the conduct of the trial is within your discretion which is considerable. But still in all, all I wanted to do is have him to identify the parts as a foundation for my expert, in order to cross examine him. I want to have a chance to talk to my expert.

The Court: When he is through we are going to have a five minute recess and then you can examine him. No problem there.

Q. Mr. Kuschell, did you also make an examination (48a) to determine whether or not, what—withdrawn.

Do you know any parts of this Exhibit 2 which are in any way damaged from their normal condition? A. Yes.

Q. Would you tell his Honor about what you found with respect to that? A. Yes, first thing I did when I received this part, of course, was to examine the part to see what damage was inflicted upon this part and we could see, first of all, that the tie rod tube has a definite bend to it. We were able to note that the tie rod end had a severe bend, especially at the junction of the thread to the tie rod body end. There was distortion of the throat



*Kenneth Kuschell, for Plaintiff, Cross*

opening of the tie rod body end. Getting away from that into the tie rod end and bearing, we could say the stud had had a visual bend to it and the bearing was jammed onto the ball end of the tie rod stud.

Q. Now, do you have an opinion with a reasonable degree of engineering certainty as to what was the cause of all of this damage you observed?

The Court: He can just tell us what he sees, but the conclusion would be for me, whether or not it was caused by the trauma or whether or not it was by a defective condition itself. That is the issue before the Court. For him to tell me the (49a) answer, there is no sense me sitting here.

Mr. Ausubel: I of course am bound by your Honor's ruling.

The Court: You may have some other questions.

Mr. Ausubel: I have other questions.

Q. Now, in so far as—

The Court: I assume his opinion would be, in any event, that it was the trauma that caused it. So I am not going to be that naive not to know what he is going to say.

Mr. Ausubel: May I ask a hypothetical question and if your Honor rules against me at least I preserve it for the record.

The Court: We are now into an area of New York law which is what we are going to try it on. You can ask the question on the basis the question construction of the item and as to opinion as to whether something else caused it. That is for the Court. Whether or not the construction of the item can result in what it is now, he can give us that opinion.

*Kenneth Kuschell, for Plaintiff, Cross*

Q. Now, sir, in so far as this piece which is made up of Plaintiff's Exhibit 2 for identification, do you notice something at this point there of the piece? I don't want to characterize the part. (50a) A. Yes, in addition to all the other things I talked about on this particular assembly, the bearing itself also showed extensive crushing of the bottom end.

Q. I see. Now, was there evidence of pry out in connection with this? A. Yes, there was.

Q. And in terms of your background, do you have a degree in metallurgical engineering? A. Yes, I do.

Q. For how long have you been employed in the automotive field as a metallurgical engineer? A. Since 1964.

Q. I see. And in the course of your experience do you also teach the subject of metallurgy? A. Yes, I teach. I have taught and presently do teach non-ferrous metallurgy and heat treatment of ferrous metals at Comb County Community College in Michigan.

Q. When you made an examination of these parts did you find any evidence that these parts had been previously lubricated? A. Yes. The photographs that were presented to us prior or during or after, I don't know when, but photographs supposedly of a car showing that there was extensive amounts of lubrication, grease around the part.

(51a) Q. And in the parts that you observed was there any evidence of any seizure of this? A. No, sir.

Mr. Kaplan: I am going to object to his testifying, he keeps leading the witness.

The Court: It is better form to tell us what he found. I suppose it's just simplification of the trial itself. All right.

Q. Now, I am going—you say there were certain photographs—

*Kenneth Kuschell, for Plaintiff, Cross*

The Court: That seizure, you are talking with whether or not there was any binding of the bearing within the throat or the housing itself.

Q. Was there any evidence of that itself? A. No evidence whatsoever.

The Court: When the part was sent to you there was no grease in it whatsoever?

The Witness: None whatsoever, it had been cleaned out.

The Court: Where was the grease fitting on this part?

The Witness: It was on the bottom.

The Court: On the bottom. And is that a part that is supposed to be lubricated?

(52a) The Witness: This is lubricated in assembly. It is a semi-permanent lubrication.

The Court: What is lubricated in assembly doesn't have to be lubricated again?

The Witness: Around thirty or thirty-five thousand miles. The fitting has been knocked off so that you can't, you have to replace it.

The Court: If there was a seizure, would there be a tendency of the bearing to pull itself from this position?

The Witness: There was no evidence of bluing or gauling. You would notice a heat build up between the friction of the tie rod end and the bearing itself.

The Court: Would it seize together?

The Witness: Yes, it would weld itself together.

The Court: That is assuming it would last for some time?

The Witness: Yes.

The Court: Let's assume it didn't last for some time, the binding situation.

The Witness: You would still see evidence of melting pull up from one to the other. There is (53a) nothing but a clean bearing surface here. There was normal wear

*Kenneth Kuschell, for Plaintiff, Cross*

which you would notice on a bearing surface, polished fully.

By Mr. Ausubel:

Q. Now, you mentioned in answer to one of his Honor's questions that there was no evidence of bluing or gaulling. A. Correct.

Q. What does that mean, sir? A. That indicates if there was bluing or gaulling there was severe metal to metal contact, probable welding and pull up from one part to the other.

The Court: What would you say would be the maximum heat that would be required for this friction to take place to weld itself?

The Witness: Probably in the area of two thousand degrees Fahrenheit.

The Court: This is anything above seventeen hundred?

The Witness: Yes, anything above the melting point of the material.

The Court: Let's say it was to seventeen-fifty, it wouldn't weld itself?

The Witness: You would get a difference in color.

(54a) The Court: Let's assume it approached seventeen hundred, would you get a difference in color just approaching it?

The Witness: Yes, you don't have to go that high to get change in color. Five or six hundred degrees would do that.

The Court: You have at least a three times maximum on it?

The Witness: Yes.

Q. Did you find any evidence of bluing or gaulling of the bearings in either parts— A. None whatsoever.

Q. —that you had examined? A. I will add also a file hardness test was made on the bearing. If the increase



*Kenneth Kuschell, for Plaintiff, Cross*

in temperature had been there we wouldn't have found the hardness.

The Court: Let's assume it did seize itself. Let's assume that the testimony of the plaintiff as he says it was, he was driving and all of a sudden he had difficulty in controlling it. It didn't arrive at the seventeen hundred or the one thousand, but it did arrive at six hundred or eight hundred, would there be a bluing to indicate a seizure?

(55a) The Witness: Yes, and also loss in hardness of the particular surface of the part.

The Court: At a degree?

The Witness: Yes.

The Court: Still could bind it at a normal temperature?

The Witness: That I don't know about the bearing.

The Court: If it weren't a proper fitted bearing, let's assume you drove it long enough and they say they drove it four thousand miles, if it weren't a properly fitted bearing and it wore itself to where it would bind, without causing bluing—

The Witness: You are getting to semantics now; you would certainly get a welding of the two parts.

If there was to be a seizure there would have to be a welding of one part onto the other.

The Court: Couldn't it release it without being completely welded?

The Witness: It would release it but there would be evidence of that.

The Court: Let's say just by a reduction of heat, it would release it?

The Witness: Yes.

(56a) The Court: You would still say there would be a bluing.

The Witness: There would be a bluing. They would not separate at the same faying surface that they originally joined.

*Kenneth Kuschell, for Plaintiff, Cross*

Q. Was there any evidence at all of any seizure or bruising or gaulling in any of the parts that you examined, sir? A. None whatsoever.

Q. Now, you were shown certain photographs that were furnished to Chrysler by the plaintiff, were you not? A. Yes, I was.

The Court: Just one question: in order for a person driving an automobile, he would have to have a rather sensitive feel or ear to know whether or not a steering apparatus was working properly or not. In other words, you as a metallurgist can feel through the steering apparatus to feel whether or not there is a metal to metal situation.

The Witness: You would hear it.

The Court: A person not familiar with it may not hear it.

The Witness: I think it would be quite a heavy squeal.

(57a) The Court: Would it be a real heavy squeal?

The Witness: I would think.

The Court: How much before the time of the occurrence?

The Witness: I really don't know. I think Mr. Hassen could probably answer.

The Court: You won't call it semantics, though.

The Witness: No.

Q. Were you shown this photograph that was furnished by the plaintiff, figure one? A. Yes, I was.

Mr. Ausubel: All right. I offer this photograph in evidence.

Mr. Kaplan: Are those my photographs?

Mr. Ausubel: Yes.

Mr. Kaplan: Okay.

The Clerk: Photographs marked in evidence as Defendant's Exhibit D.

(So marked.)

*Kenneth Kuschell, for Plaintiff, Cross*

Q. Now, could you tell us what Exhibit D portrays?

A. Figure one portrays the damaged tie rod end or the whole tie rod assembly. It shows the tie rod end (58a) with the bearing seat and the end view of the tie rod stud and with the bearing attached to it. It depicts, of course, the damage which was—

Q. Now, is there evidence of pry out in this photograph? A. Yes, there is.

Q. Now, do you have an opinion—I will ask the question: do you have an opinion with a reasonable degree of certainty as to what the cause of the pry out is?

Mr. Kaplan: Objection.

The Court: I will allow him to answer.

A. Yes, severe overload.

The Court: Would you say that it is a traumatic overload?

The Witness: Yes, of the impact variety.

The Court: On the pry out you are talking about are you talking about it trying to release itself? Somebody else may read this record beside me and they wouldn't know what a pry out is.

The Witness: In other words, forcing the stud against the tie rod end and it has no place to go and it pulls itself up.

Q. Now, I want you to assume for a moment that the driver of the car from which these parts came struck (59a) an automobile. The right front section struck the automobile. Would an accident of that kind, a violent collision, in your opinion with a reasonable degree of certainty, cause this damage?

Mr. Kaplan: Objection.

The Court: I am going to overrule the objection unless he wants to answer it.

*Kenneth Kuschell, for Plaintiff, Cross*

A. I believe the striking of the car—there has to be contact with the wheel.

The Court: But he didn't say the right front wheel, did he?

The Witness: No, he did not.

Q. Assuming the right front wheel was in contact, assuming that the right front wheel of that same car came into violent collision with a retaining wall, would an accident of that kind, in your opinion, with a reasonable degree of engineering certainty, be a competent producing cause of the damage you saw? A. Yes, sir.

Mr. Kaplan: Objection.

The Court: I am going to allow the question, according to what the man's testimony was.

Mr. Ausubel: I don't have to accept for purposes of my hypothetical.

(60a) The Court: It doesn't make any difference.

Q. Assume that the undercarriage, the right front undercarriage of the car came into violent collision with the retaining wall, would an accident of that kind, in your opinion with a reasonable degree of engineering certainty, be the competent producing cause of the damage you observed?

Mr. Kaplan: Objection.

The Court: I will allow it.

A. The primary force has to be transmitted through the wheel.

The Court: In other words, what you are saying, the front wheel had to hit it like that and push all that business over. That is what would cause the prying out situation?

The Witness: That's right.



*Kenneth Kuschell, for Plaintiff, Cross*

Q. And in so far as bending is concerned?

The Court: If he had—if it hit the car that way first, would it have gotten to the wall if it had done it first?

The Witness: I think it would have.

The Court: Or would the wheel have collapsed?

The Witness: Yes, to some extent it would collapse. There is no support for it. Yes, over (61a) three thousand pounds of automobile.

The Court: We are going to take a five minute recess at this point.

(Recess taken.)

---

The Court: All right.

*Cross Examination by Mr. Ausubel (Cont.):*

Q. Mr. Kuschell, were you also shown this photograph as one of the photographs that the plaintiffs submitted, figure 8. A. Yes, I was.

Mr. Ausubel: I offer that photograph in evidence.

Mr. Kaplan: You can mark them all if you want.

Mr. Ausubel: I will mark these two for the time being, figure 8 and 5.

The Clerk: Photographs marked in evidence as Defendant's Exhibits E and F.

(So marked.)

Q. Now, with respect to Exhibit E which is figure 8, would you tell us what that photograph portrays. A. Figure 8 displays the tapered section of the stud which

*Kenneth Kuschell, for Plaintiff, Cross*

was pulled out of the assembly and this, the tapered (62a) shank shows several peripheral or circumferential cracks on the surface of the part.

Q. Do you have an opinion with a reasonable degree of metallurgic certainty as to what was the cause of those cracks. A. Severe tension causing the cracking or opening of the part. There is severe angulation of the stud through the tie rod end.

Q. To use his Honor's term, would a trauma, an automobile accident, in your opinion, with a reasonable degree of certainty, be a competent producing cause of this?

A. Yes, the automobile accident of the type described with sufficient force imposed upon the part to cause this.

Q. With respect to Exhibit F which is figure—what number is that? A. Figure 5.

Q. Figure 5. What does that portray? A. This portrays the tie rod end, specifically the socket portion of the tie rod end which is in question. This particular part has a section which had been removed from the socket portion. This is before we received it. Actually this is not our photograph. Somebody else removed this. Anything else?

The Court: That was in order to get the (63a) bearing out and shaft out?

The Witness: No, that was already out.

The Court: It was already out?

The Witness: That happened during the accident. There were pictures indicating that. This was evidently to find out the condition of the metal tie rod end.

The Court: The testing of the metal?

The Witness: Right. This particular part shows some cracking of the throat opening and distortion and smearing of the metal at the throat opening of the tie rod end. It is indicative of the pull out of the stud through the throat's opening.

*Kenneth Kuschell, for Plaintiff, Cross*

Q. Do you have an opinion with a reasonable degree of engineering certainty as to what was the cause of this condition? A. Severe overload, probably through the result of the accident.

Q. Now, in so far as there is a sort of a dark mark, on one of these things, what is that dark mark, sir, on Exhibit— A. Dark mark?

Q. —on Exhibit E. A. The dark mark on Exhibit E here is carbon build up (64a) from the seal which holds the lubricant within the part.

Q. Now, there were tests that were performed in Detroit in terms of durability and strength of these particular parts, is that correct? A. Of these particular parts, yes.

Q. And did you also take a similar section of that cut. A. Yes. I removed a section from the tie rod end adjacent to the cut that was already made and was mounted in plastic which is shown here.

Q. In this little— A. That is called a mount.

Q. —mount. A. What you call mount.

Q. Was some analysis made of that, sir? A. Yes, the particular part was of course polished and etched and examined metallographically.

Mr. Kaplan: Did he make this test or somebody else make the test?

The Witness: I did this myself. I polished it myself and etched it myself and examined it myself.

Q. What did you find? A. I found that the structure of this part is ferrite (65a) and pearlite, which is basically—which is an occasion of a normal lived structure and the amount of pearlite that was present indicated it was a medium carbon steel which this particular part was specified to be made of.

Q. Did this condition conform with all of the specifications for the part? A. Yes. In addition to that I also

*Kenneth Kuschell, for Plaintiff, Re-direct*

took Vicker's hardness test on the throat opening and in the body of the part and I found that this ranged from Rockwell B 92 into range 96 which is within the specified rack of Rockwell B 90 at the throat opening of the part.

Q. Incidentally, in connection with your experience as a metallurgical engineer at Chrysler, have you performed tests at the proving grounds and laboratories? A. We test parts in our laboratory which have failed on proving ground tests. We also, in other words, check all the materials and fractures to determine what caused the failure of the part.

Q. Over your experience how many of these have you participated in? How many tests have you participated in? A. Oh, hundreds.

Q. Just one other question. Did you find any evidence at all, in your examinations of these parts, of any pre-impact damage? (66a) A. None whatsoever.

*Re-direct Examination by Mr. Kaplan:*

Q. Mr. Kuschell, have you personally, previous to the institution of this law suit, examined this particular part for this particular car? A. You mean a part similar to this?

Q. A part like this from a 1971 Dodge Swinger. A. You mean another one?

Q. Another one, yes. A. I may have.

Q. You don't recall whether you have or you haven't? A. Not for certainty.

Q. Now, do you recall that even from the proving ground test that you had that there were instances where people brought you these particular parts from a '71 Dodge Swinger for examination? A. There may have been.

Q. But you don't recall a specific? A. Not for certainty.



*Kenneth Kuschell, for Plaintiff, Re-direct*

Q. No?

Now, can you tell us, Mr. Kuschell, how fast you would have to drive that car into a stationary (67a) object in order to duplicate the damage you have described? A. No, I don't know.

Q. Are there any statistics available for that? A. This is a very complex question to answer. Primarily because we do not know exactly what angle and so forth that the part hit.

Q. In other words, you sat there while the plaintiff, Mr. Langford, testified and described the speed of his car and what happened when he hit this Chevelle and went up onto the sidewalk into a retaining wall, did you not? A. Yes.

Q. Now, was what he testified to of any significance in your calculations for your testimony here? A. Yes.

Q. And was the fact that he hit two or three different things of significance? A. Yes.

Q. Now, from listening to his testimony, Mr. Kuschell, would striking that Chevelle alone, if there had been nothing else, have caused the damage you have described? A. It could have.

Q. Now, what is that based on? What do you base that answer on? (68a) A. Based on the speed and the damage.

Q. Yes, I know. Based on what scientific facts? What angle would he have to hit that parked car? A. That I don't know.

Q. You don't know that? A. I don't know.

Q. What speed would he have to hit that car? A. I don't know.

Q. With relation to the point above the ground, these cars have different sizes, don't they? A. Yes.

Q. Some are more off the ground than others? A. Yes.

*Kenneth Kuschell, for Plaintiff, Re-direct*

Q. The compacts are lower, the Cadillacs are higher, true? A. That's correct.

Q. Isn't that a factor, what the point of impact is as between two cars, whether the Dodge is going to hit higher up on the Chevelle or lower down? A. Yes, but we really don't know. All we have to do is look at the evidence of the damage to the automobile after the accident to indicate what impacts were involved.

Q. That is a factor in your calculation at what point he hit this Chevelle, isn't it? (69a) A. To some extent, yes. A car is not designed to run into another automobile.

Q. Conceivably, if he had hit bumper to bumper with the Chevelle than if he hit with his grill into the side of the Chevelle? A. Yes, there would have been other damage, yes, certainly.

Q. That would have affected these other parts you are talking about? A. Yes.

Q. You really don't know what the relationship is of the point of impact is to the damage you are talking about? A. Not for certain, no.

Q. With relation to his testimony about hitting the retaining wall and so on, wouldn't the angle of impact have a bearing on what kind of damage would be sustained? A. It would certainly have a bearing on the load to the parts.

Q. There are certain calculations with respect to force and pattern of force? A. That's correct.

Q. You haven't made any of those calculations? A. No, sir.

(70a) Q. They are technically capable of computation?

A. We had no idea of what the angle was and so forth. So how could we really calculate that?

Q. After listening to his testimony you still have no better idea? A. I don't understand the question.

Q. You still have no better idea of working out a mathematical computation after hearing Mr. Langford

*Kenneth Kuschell, for Plaintiff, Re-direct*

testify? A. I don't think mathematics has anything to do with this.

Q. You heard his testimony, you heard Mr. Ausubel cross examine him at length? A. Yes, sir.

Q. You talked with Mr. Ausubel about this case? A. Yes, I talked with him.

Q. Did you tell Mr. Ausubel that it may be of value to identify, or help your testimony if he would find out for you exactly what the angles of impact or speed of impact were? A. No, I did not.

Q. It would help you? A. It wouldn't help me.

(71a) Q. It may help some other expert? A. It may help some other expert.

Q. Some other expert may be able to do something with that type of information? A. Very possibly.

Q. Mr. Kuschell, can you tell us whether the first impact or second impact or combination of both impacts caused the damage you described? A. No, I can't.

Q. You can't tell whether the first one did it alone or combination of the two of them? A. There had to be a single one. There is no evidence of double impact.

Q. You heard him testify that he hit the car, the Chevelle? A. Right.

Q. And then there was some interval, fifteen feet, twenty feet, twenty-five feet, whatever it was? A. Right.

Q. Until the second impact. A. Correct.

Q. Now, you are telling us it had to be the first impact that did this? A. I would suspect that it was the first impact.

(72a) Q. If the first impact did this, the Judge asked you before as to whether or not that would have an effect on the right wheel? A. It may have.

Q. It may have if it had an effect on the right wheel it would have had an effect in each direction his car traveled? A. Not necessarily.

*Kenneth Kuschell, for Plaintiff, Re-direct*

Q. If the wheel is contorted to one side or the other with respect to the part prying out would that have a bearing on the direction? A. It is getting out of my field of expertise.

Q. I don't mean to take you out of your field. I am trying to find out what the basis is of what you already testified to. A. Right.

Q. Not what you might otherwise have testified to. You have told us in your opinion, categorically, that a trauma caused the pry out of this part? A. Yes.

Q. That is your opinion? A. That is absolutely correct.

Q. All these questions devoted to that, do you know what happens to a wheel when there is a pry out at (73a) the tie rod end? A. It depends on what happened afterward.

Q. Will something happen to the wheel when the tie rod is pried out? A. Depends, some cars, the wheel will continue to go straight.

Q. And some cars it won't? A. It depends whether you hit the brakes or don't hit the brakes or turn the wheel or not turn the wheel. Things of that nature.

Q. If the tie rod comes out will the steering wheel respond? A. If the motion of the car—

Q. You didn't answer that.

Mr. Ausubel: He did indeed ask him that.

The Court: He has answered.

Q. If the tie rod was pulled out and Langford turned the wheel of the car to the left, would you expect the car to go to the left? A. I would think it would.

Q. You would think so, the wheel would turn, right? A. The left wheel would turn. The right wheel wouldn't respond.

(74a) Q. Would that affect the direction of the car?

A. It could.



*Kenneth Kuschell, for Plaintiff, Re-direct*

Q. Have you ever seen this happen before? A. No, I have not.

Q. So what you are telling us about is what you suppose? A. No, this is from discussion with my engineering colleagues.

Q. You mean you talked to people about this and collected their opinions? A. People who have actually driven automobiles in which a tie rod has failed.

Q. This is what you are basing your opinion on, is what somebody else has told you? A. That's correct.

Q. Have your engineering colleagues told you specifically what would happen if a '71 Dodge Swinger had this pry out after hitting a Chevelle? A. I don't believe they have told me specifically a '71 Dodge Swinger.

Q. Or even a Dodge of any kind? A. Not even just a Dodge.

Q. Of any vintage? A. They never told me what type of car they were (75a) driving. It was a Chrysler product, though.

Q. Mr. Kuschell, when you got those pictures and those parts you got a copy of a report from an American Standards Testing Bureau, Inc., did you not? A. Yes, I did. Two reports.

Q. Two reports? A. Correct.

Q. And I assume that is what those pictures that are marked into evidence were attached to. Isn't that correct? A. When I received the copies of the reports there were no pictures. They were just copies of the reports.

Q. You saw the reports? A. Yes, I did.

Q. All right. Now, did you read in the report—

Mr. Ausubel: Just a minute. If he is going to refer to a report and the contents of the report,  
• I am respectfully objecting. The report is not in evidence and it is improper cross examination for a report that is not in evidence.

*Kenneth Kuschell, for Plaintiff, Re-direct*

The Court: I think he has the right to ask him whether or not he agrees with a certain report even though it is not in evidence, since he is familiar with it.

(76a) Q. Did you read in the report where it said, "Optical examination of the sprayed ball joint stud revealed circumferential cracks over the unthreaded shank area"? A. Yes, I did.

Q. Did you see those circumferential cracks? A. Yes, I did. I testified to that.

Q. Now, he said similar observations were made on the unsprayed stud. Stud on this tie rod assembly? A. Yes, I observed that.

Q. You observed that? A. That's correct.

Q. The cracks on the failed ball joint were—

Mr. Ausubel: Your Honor—

The Court: You have an exception to it.

Mr. Kaplan: If you prefer, Judge, I will offer the report.

The Court: No, he wouldn't allow it.

Q. —were judged to be parallel to the steering line action while those on the intact inner ball stud were at ninety degrees with the steering motion direction. A. I could not make any sense from that statement.

Q. Well, why don't you read it. I will put a (77a) check here. A. I had read it. I read it several times and couldn't understand what they meant.

Q. You read that? A. Yes.

Q. But you don't agree with that? A. I don't know what it means.

Q. Well. The cracks on the failed ball joint were judged to be parallel to the steering line action. What —is steering line action the phrase that is giving you a problem? A. I don't understand the whole statement.

Q. All right. Fine.

*Kenneth Kuschell, for Plaintiff, Re-direct*

Then he said, "Moreover, the metal sphere and tie formation looks to be in line with the stud cracks." Did you read that in this report? A. Yes.

Q. Did you find that to be true? A. The only metal sphere we found on the tie rod end was at the throat opening.

Q. You didn't find any other metal sphere? A. No.

The Court: Did you cut it to take a piece off it?

(78a) The Witness: We can see the metal sphere.

The Court: I see, when it's pulled out.

The Witness: Right.

Q. Now, Mr. Kuschell, you have told us before that this part is lubricated, is that correct? A. That's correct.

Q. And it is lubricated while it is being assembled, is it? A. Well, after it is completely together, then lubricant is pushed into the cavity. A. Yes.

Q. What lubricant is it? A. It is a lithium base grease.

Q. What is the function of that lithium based grease?

A. To prevent direct metal to metal contact between the parts of the assembly.

Q. Does that also have some effect on the temperature in the joint that you lubricate? A. That I don't know.

Q. You don't know? A. I don't know.

Q. Do you know at what temperature that lubricant is pushed in there? (79a) A. I assume at room temperature.

Q. Have you ever seen this process done? A. No, I have not.

Q. Do you know what the specifications are for the temperature of this lubrication while it is in there? A. I am sure it shows on the particular drawing of that assembly, but of my own knowledge, I don't know.

*Kenneth Kuschell, for Plaintiff, Cross*

Q. Does it have an effect of cooling the part? A. Lubricant does have an effect as acting as a coolant.

Q. You say from the pictures this part was well lubricated? A. Yes, as evidenced in the report that you are referring to, that the part was—contained a lot of grease, dirt.

Mr. Kaplan: Okay. Thank you very much.

The Court: Any questions?

Mr. Groff: If your Honor please, I have questions on my cross complaint. I don't want him to come back. But just one or two questions.

The Court: Why don't you ask him.

Mr. Groff: If it's all right with your Honor.

The Court: Yes.

(80a) *Cross Examination by Mr. Groff:*

Q. Mr. Kuschell. A. Yes, sir.

Q. You are familiar with the manner in which Dodge or Chrysler products are designed or assembled? A. Yes.

Q. Now, are they designed and assembled in Chrysler plants? A. Some of them are. This particular part is.

Q. In this particular car was that car designed by Chrysler engineers or architects? A. Yes.

Q. The point I am making, Mr. Kuschell, is this: when that car is sold to a franchised dealer or Woodbridge Motors in this case, that car, before it is given or sold to Woodbridge, is completely and totally designed and assembled by Chrysler themselves. Woodbridge has nothing to do with the assembly of the car?

A. I would assume that is correct.

The Court: Okay, you may step down.

Next witness.



*Kenneth Kuschell, for Plaintiff, Cross*

Mr. Ausubel: Your Honor, I didn't realize before, I brought in two experts here and he is (81a) making them his witness. I disagreed with his position if he is going to make them his witness I have the right to cross examination of the witness.

The Court: On the first witness you are talking about?

Mr. Ausubel: Yes, he put on both witnesses. Apparently he is making them his experts.

The Court: I don't know whether that is true or not. He merely brings them and puts them on the witness stand for the purpose of being persons who have greater knowledge of the problem that is at hand for the Court. It isn't a question of being his witness or someone else's. They work for Chrysler. That is why they are here.

Mr. Ausubel: I am just stating my position. These were my experts witnesses which were disclosed to him. Copies of whose reports were given to him and he is putting these witnesses on the stand. I cannot prevent him from putting them on the stand. I am indicating under rule 43, he calling the witnesses is now making them his witness.

The Court: The question is whether or not there is any situation any adversity involved.

Mr. Ausubel: If he established hostility, (82a) now he can examine them. It doesn't alter my position as a defendant as a cross examiner.

The Court: This position in this type of case doesn't give rise to any different situation than if there were two drivers of automobiles. One is a defendant and one is a plaintiff and the plaintiff calls both and puts them on. That's what he is doing with this gentleman. Puts them on

*Morris Hassan, for Plaintiff, Direct*

as an expert and asks them, tell us what you know. He is not cross examining them where he is searching for information. You may not put them on. Then what does he do?

Mr. Ausubel: I am just stating my legal position as to what it is your Honor rules and I am also bound by your Honor's ruling.

The Court: I find, this being a non-jury trial, I find absolutely no harm in proceeding in the method that it has and it seems to me it shortens quite a bit the issues and the nature of the trial itself. If I find he goes outside of bounds I will stop him.

All right.

---

MORRIS HASSAN, called as a witness herein, having been first duly sworn (83a) by the Clerk of the Court, was examined and testified as follows:

The Clerk: State your name, sir.

The Witness: Morris Hassan.

*Direct Examination by Mr. Kaplan:*

Q. Mr. Hassan, are you employed by Chrysler Corporation? A. Yes, sir.

Q. In what capacity? A. Senior product development engineer.

Q. What do you do? A. Establish liaison between manufacturing, the vendors, who are the suppliers, assembly plants, customers, field problems, proving ground tests and so on.

Q. Your background is primarily as an engineer? A. Yes.

Q. Have you ever done or supervised the assembly of automobiles, putting tie rod ends together, things of

*Morris Hassan, for Plaintiff, Direct*

that nature? A. If you say supervisor it means that. Do this job, no. I give directions to the people that do the supervising.

Q. Now, are you familiar with how tie rod ends (84a) on a '72 Dodge Swinger were put together? A. Yes.

Q. '71, I am sorry.

Now, basically it is a description that the previous witness gave us that you would give us? A. Basically.

Q. Now, do you have anything to do with designing or the systems end of this product? A. I am not a design engineer. However, I do work with the designing department. As a matter of fact, we are one now and I do give guidance if I know of problems. For instance, I make sure that new designs coming up bypass these problems.

Q. Did you have anything to do with the design of this particular part we are talking about today? A. No, this particular design, as such, had been in existence for many, many years.

Q. You are familiar with the design? A. Yes.

Q. Mr. Hassan, can you tell us basically what is the function of this part, Plaintiff's Exhibit 2? A. Well, this is a tie rod end and it transfers the forces put in by the steering wheel. It is an interlink, part of the linkage system and if you want me to (85a) describe it more in detail—

Q. Yes, would you please. A. Off the steering gear there is a mitman arm or steering gear arm that goes to a certain link on the certain link. On each arm there is a tie rod. On this car they are essentially the same. They are exactly the same, as a matter of fact. These are in turn connected to the knuckle arm which is attached to the backing plate of the drum or knuckle or spindle as most people call it.

Q. Basically it is part of the steering system, isn't it? A. Yes, sir.

*Morris Hassan, for Plaintiff, Direct*

Q. In other words, when the average man or average driver gets finished turning the wheel of his car it is this part that transmits the message to the tire? A. It is one of the parts.

Q. That cause the front tire to go in one direction or the other? A. Transmits the force to do this.

Q. Now, have you personally run tests on this particular design or assembly? A. I have conducted impact tests, weather tests, life tests, correction tests, lubrication tests, yes.

Q. On this? (86a) A. Yes.

Q. Now, can I ask you, are you familiar, Mr. Hassan, with how many '71 Dodge Swingers Dodge put out? A. I am sorry, I don't know the number.

Q. Do you have any approximation? A. I wouldn't want to hazard a guess.

Q. Now, is this particular part tested before it is put into the car? A. You say individually, each one before it is going into a car tested?

Q. Yes, tested in any manner or some manner. A. The definition of testing is to test it to failure or merely show or show signs of deterioration

Q. In layman's language we understand that this piece goes to a heat process? A. Yes.

Q. Then the machine puts it in a car on an assembly line? A. A person does.

Q. With the help of a machine? A. Somewhat.

Q. It is an assembly line procedure? A. Yes.

Q. Whether you call it inspected, tested or what, as (87a) I would understand the term as a layman, does anybody at Chrysler do anything to this part before it is inserted into the car? A. Yes, they do. In some cases parts are tested 100%. Some, they are tested by a certain per centage per batch, through each operation. It depends on the type of operation that it is.



*Morris Hassan, for Plaintiff, Direct*

Q. Each part is not individually tested or inspected?  
A. Not every one. In some cases this is true. Not all parts.

Q. Let's take this particular part that is on the table in front of you. What percentage of them are ever tested or inspected? A. The entire assembly as such.

Q. Let's talk about the ball socket. A. This end here?

Q. The end, yes. A. This too is an assembly made up of other parts. The stud, they are tested. Every one of them goes through an Eddy current test.

Q. How about the socket itself? A. The forging, they are, I think they are done in batch and a certain percentage every so often are checked (88a) by the metalurgical laboratory. What those numbers are I am not familiar at the moment.

Q. Into that socket there goes a ball, isn't that a fact?  
A. Partial ball, if you want to describe it that way.

Q. How would you describe it? A. We call it a hemispherical socketel wall or head.

Q. Hemispheric? A. Yes. Normally the term is used as a ball joint. And this is perfectly acceptable because it is a ball joint in a sense. We don't use a full ball. Very few automobiles do. But it is a half spherical ball with a small ball on top.

Q. What is the process by which that ball is put into the joint? A. Well, as it goes down the—as it is being assembled the forging is all machined or parkerized or phosphate coated and is dipped in a thin oil. The first thing that drops in there is this bearing. The next thing that follows is the stud and on top of that goes the pressure plate which is this. And then the spring goes over that and then this cover that you see in the back is laid on top of that and then it indexes to the next position. Plunger comes down and compresses the spring and everything (89a) into the cavity and as it goes down into the next station it is crimped into this end of the tie rod.

*Morris Hassan, for Plaintiff, Direct*

Q. Are all those steps that you described done by machines? A. People and—people working machines.

Q. It goes along an assembly line? A. Yes.

Q. In what part of the construction of the car does this take place? A. This is done in an entirely different plant. This particular one was assembled in New Castle, Indiana.

Q. What stage of construction is the car in when this particular part is put in the car? A. When it is put into the car?

Q. Yes. A. Well, it is hard to say. Let me describe how it is put in the car in steps. First of all, one end is attached to a certain line, on a pre-assembly line. This is all the fellow does is attach them to certain lines. And there's a lever arm on it and it goes down to a part of the plant and this is attached to a steering gear arm and these outer ends are not assembled yet until the knuckle are is swung up and puts the nuts on, Carter's pins, and it goes on to the next guy to grease them.

(90a) Q. Then what happens? A. Then, as it gets down to the end of the line, there is an inspector and he inspects it for all the nuts and Carter pins and torqueing of the tie rod clam tube and he applies this white paint on this.

Q. At the time that the inspector checks all these things in the hemisphere or ball in the joint? A. Yes.

Q. Does he make any special type of inspection of the joint? A. It's all enclosed and encapsulated and he cannot see it.

Q. He cannot see it any more? A. No.

Q. Mr. Hassan, is that particular part supposed to be available for ordinary mechanical inspection after it is put in the car? A. I guess I don't follow your question.

Q. In other words, if I were to take my car to a mechanic would he be able to see or do anything to that ball joint? A. To inspect and see its condition?

Q. Yes. A. Yes, he could.

*Morris Hassan, for Plaintiff, Direct*

(91a) Q. Without disassembling it? A. Yes.

Q. He could pull the ball out of the joint? A. No.

Q. What would he have to do? A. To take a hold of the tie rod and push into it this way. If any wear has occurred it would be very loose.

Q. And does Chrysler recommend to its dealers that it perform this test at a three thousand or four thousand mile check or five thousand mile check. A. There's an inspection procedure to check all these parts, yes.

Q. At what point? A. Any time the car is being serviced for any reason, steering linkage is being inspected for any reason.

Q. Irrespective of looking at the steering linkage is that a standard part of the check up? A. You will even see gas stations attendants doing this because they are also trying to sell new parts.

Q. This is a brand new car. When he took it into Woodbridge Dodge had you people given to your dealers instructions as to what to do with this inspecting or looking at the ball joint socket?

Mr. Groff: At this point, your Honor, I am (92a) going to make an objection to any testimony on this point in that there is absolutely no allegation in the complaint of any negligent or improper inspection on the part of the defendant herein, my defendant.

The Court: I don't think he is asking him for that reason. He wants to know whether there is any inspection list for that purpose. That is all. Not whether you had it or not.

Q. That's right, Mr. Hassan. Is that on the part of any inspection lists that Chrysler gives its authorized dealers? A. There is a new car preparation list or chart.

Q. Is that before the car is sold? A. Yes.

*Morris Hassan, for Plaintiff, Direct*

Q. How about at the first, at the initial check up, is that part of any list? A. I really can't answer that question if that is included in that list. This is out of my area.

Q. That is out of your area? A. Once the car has been sold, pretty much, unless a problem arises.

Q. Can you tell specifically what the function is just to the ball joint socket? (93a) A. What the function of this is?

Q. The ball joint socket alone. A. It provides angularity, it has pivotability and an angularity, so that it can move in any number of directions. It has this angularity, and it has rotation for steering.

Q. Is it an important part of that whole assembly? A. Of course.

Q. Would the car be able to steer well if there was some malfunction or damage of any kind to that ball joint socket? A. What?

Q. Would the car be able to steer normally if there was damage to that ball joint socket? A. It depends on the extent of the damage.

Q. Would it have any effect on it? A. Yes, I suppose a small degree.

Q. Do you have any idea, Mr. Hassan, how many cars this inspector that you talked to us about, the inspector that works on the tie rod— A. I wouldn't know.

Q. You don't know? A. I wouldn't know.

(94a) Q. Do you know what the incident, or the lapse of time between the manufacturer and it being shipped to the plant? A. Couple of days to a couple of months.

You are talking about the part before it gets to the car? The shortest time possibly would be twenty-four hours. The system we have would be first in and first out. It would be unlikely to stay in the assembly plant more than seven days.

Q. Does the New Castle plant make any other parts besides the tie rods? A. They make all the tie rods.



*Morris Hassan, for Plaintiff, Cross*

Q. Do you have any idea how many tie rods you get from them a week? A. It must be a lot.

Q. Four tie rod ends to every car? A. Yes.

Q. Chrysler sold a lot of cars in 1971? A. Yes, they did.

Q. After the car is all put together, Mr. Hassan, does Chrysler run some checks on it or tests on it? A. Inspectors run what they call, they run tests or torque, if you want to call it a test.

(95a) Q. What is torque? A. Torque means how tight bolts are or nuts.

Q. Throughout the car generally? A. The crucial parts, yes.

Q. Do they inspect every single car? A. Yes.

Q. What does the test consist of in time, per man, per car? A. The car moves down the line, probably one car every fifty seconds, fifty-five seconds. He has fifty-five seconds to check his segment of it. He has only certain responsibilities.

Q. How many inspectors inspect? A. I really don't know how many there are.

Q. Are there specific road tests given for each of those cars? A. Not for this car.

Mr. Kaplan: I have nothing further.

The Court: You may examine.

*Cross Examination by Mr. Ausubel:*

Q. First, you were asked about certain procedures that the dealer was required to undertake after delivery of the car and before sale to the customer and I want to (96a) ask you, is this a form that you referred to that is given to the dealer for purposes of a predelivery inspection? A. This looks like what I have seen before, yes.

Mr. Ausubel: I offer that in evidence.

*Morris Hassan, for Plaintiff, Cross*

Mr. Kaplan: I didn't hear the answer, Judge. Mr. Ausubel has a habit of getting in front of the witness.

The Court: It looks like the inspection list.

Mr. Ausubel: I missed that. I will represent to the Court that this came from the deposition of the defendant, Woodbridge Dodge.

Mr. Kaplan: Just don't get between me and the witness, if you can help it.

The Court: We will mark them.

The Clerk: Defendant's Exhibit G.

(So marked.)

Q. Now, I don't want to go through a long list of your qualifications, sir.

The Court: They are conceded, I am sure.

Mr. Kaplan: I have no objection.

Q. You have had over thirty years of experience directly in the automotive industry, is that correct? A. Yes, correct.

Q. You are now in the steering and suspension (97a) department of the Chrysler Corp., is that correct? A. That's correct.

Q. And is it a fact that you have examined thousands of these steering mechanisms that you testified about? Is that correct? A. Yes, sir.

Q. You are familiar with all the tests that are performed and the procedures and the functions of this part and so forth? A. Yes.

Q. Now, you examined these parts, is that correct? A. Yes, sir.

Q. And when you examined these parts what did you observe with respect to these parts?

Mr. Kaplan: Is he now talking about Plaintiff's Exhibit 2, your Honor?

*Morris Hassan, for Plaintiff, Cross*

Mr. Ausubel: Yes, your Honor, I am talking about Plaintiff's Exhibit 2.

A. Well, as I received it, it's pretty much the way it is today except there was a little more melting at the socket. I noticed the tie rod tube itself had a little bend in it and the shank of the tie rod forging was obviously bent and the throat opening of the tie rod end, which was the most significant thing to me, had a triangular (98a) deformation and this as a text book example of pry out. This looks exactly like a tie rod that had run through out own tests.

This was originally implemented by the Ford Motor Company. We decided that the cam out test was probably the best way to test the tie rod because it is in its weakest condition, being cammed out. The tie rod stud has peripheral cracks on both ends. And the tie rod end has bumps on it. As it is pried out you have the shank and the bearing as it is pried out. To me it was a pure and simple cam out condition.

Q. What do you mean by cam out? A. Cam as against pull out or as against shear out. We have three tests, which we don't really do too much of the latter two. Cam out means this bearing is lock—the way we tested it, this bearing is locked in a particular fixture and we pull up what we call a tension test or we push down on a compression test. We push down and the thing will rotate until it reaches its maximum travel. At a point the torsion keeps coming down on the tie rod assembly and things start to yield, generally in this area first.

It depends on the slot orientation. In this orientation there should be some slight bend, which there is. It (98b) keeps bending until it pops the bearing out just exactly the way this did. It takes from four thousand to five thousand pounds to do this.

*Morris Hassan, for Plaintiff, Cross*

Q. Did you personally test to determine the amount of weight pressure that would be required to give you that kind of a contour? A. Yes, I did.

Q. Do you have the photographs in connection with those tests that were performed? A. This is—I ran four tests on four assemblies, oriented the slots slightly different to get a representative coverage. This represents horizontal plane in movement, in thousandths of an inch. This vertical plane represents the force needed to do this. This represents the Swinger in tension or compression. This represents the peak load, where the studs started to pry out and a minimum load to do that was three thousand, nineteen hundred pounds and the maximum was four thousand, four hundred pounds.

Q. The car weighed about how many pounds? A. Thirty-seven hundred pounds. In other words, it took more than the weight of the car to move the stud out.

Q. Is that the graph that was made up to do these tests? (99a) A. Yes.

Mr. Ausubel: I offer them in evidence.

Mr. Kaplan: I have no objection.

The Court: Mark them in evidence.

The Clerk: Graph marked as Defendant's Exhibit H.

(So marked.)

Q. Do you have an opinion with a reasonable degree of certainty as to what was the cause of the damage you found on this, on those parts which make up Plaintiff's Exhibit 2 in evidence?

Mr. Kaplan: Same objection, your Honor.

The Court: I will allow it.

A. Yes, I do.

Q. What is your opinion, sir? A. That this tie rod assembly was subjected to a severe overload condition.



*Morris Hassan, for Plaintiff, Cross*

Q. Would an accident be a competent and producing cause of that? A. I say that's about the only thing that would do it.

Q. Did you find any evidence of pre-impact damage to this? A. No.

Q. With respect—you heard the questions that were asked of Mr. Kuschell a little while ago. He (100a) was asked certain hypothetical questions as to what would happen if the tie rod had broken on a vehicle or the ball joint had—withdrawn.

Q. If, assuming hypothetically that a driver was proceeding along and along the way that Mr. Langford described in his testimony, which I take it you heard, is that correct? And assuming he applied his brakes down hard the way he claims he applied the brakes, and turned his steering wheel to the left, as he said he did, in your opinion with a reasonable degree of certainty, would his car end up on the sidewalk and collide with the retaining wall? A. You mean in an undamaged vehicle, normally? And the brakes locked?

Q. Yes. A. The car would continue to go pretty much on its straight head course a little bit until the back end started swinging out.

The Court: There are so many factors involved in that. What was the driver doing behind the wheel? What was the condition of the wheel?

Mr. Ausubel: Very good. I will ask no other questions along that line.

Q. Did you find any evidence of pre-impact (101a) seizure? A. There was no evidence of any kind of seizure. I cannot even imagine a seizure in a joint like this.

The Court: Any other questions?

*Morris Hassan, for Plaintiff, Re-direct*

*Re-direct Examination by Mr. Kaplan:*

Q. Have you ever seen a joint like this seize in any degree or respect at all? A. Never.

Q. Is it theoretically possible that the joint could seize? A. I can't—no, I would say theoretically the areas of contact are so insignificant compared to the forces that are applied that it just can't seize.

Q. You heard Mr. Kuschell testify about what seizure in that joint, did you not? A. What seizure?

Q. Did you hear him testify about heat. The Judge asked him about heat that would cause it to seize. A. Yes. I think when people talk about bearing seizing they are talking about a cylindrical bearing, shaft bearing, this type of thing, ball bearings. This is possible because you have quite a bit of contact area as compared to this.

(102a) Q. Then your opinion is irrespective of the amount of heat, this joint wouldn't seize? A. No, this joint has not seized and I can't conceive of it ever seizing.

Q. Even if the heat went up to twenty-five hundred degrees? A. I don't think it would seize, as such.

Q. Under any conditions? A. I think maybe on one, but it would be a far reaching condition. Say for some reason this thing were to get over two thousand degrees and the car stopped at a point and were allowed to cool. This would be just like welding that part. Maybe under those conditions.

Q. That is the only conceivable condition you could think of that would cause a seizure in that joint? A. Yes, sir.

Q. And even that is a speculative condition. A. Yes, sir.

Q. Did you work with tie rods that were the subject of damage in 1971 Dodge Swingers before today? A. I can't say I worked with that particular car. This tie rod is used on many cars, exactly this tie rod.

*Morris Hassan, for Plaintiff, Re-direct*

Q. Whether it's a Dodge Swinger or not you are familiar with the tie rod? (103a) A. Yes.

Q. Are there some statistics as to what force you would have to apply to the car in order to cause that tie rod to have the injury you have described? A. There are some variables in a thing like that. I don't know any companies that has those figures.

Q. Well, you were an automobile man. If you were to drive your car into another car at thirty miles an hour, would you anticipate that you would have tie rod damage?

A. If the wheel were struck, yes.

Q. What part of the wheel? A. The leading edge, or, if the impact came from the side, a side collision.

Q. In other words the angulation of the impact would have a bearing? A. Very definitely.

Q. The speed would have a bearing? A. Most certainly.

Q. The point at which the car struck the object would have a bearing? A. Yes.

Q. Now, Mr. Hassan, did you discuss your testimony with Mr. Ausubel before you testified today? (104a) A. In general, yes, yes he did.

Q. Did you explain these factors to him? A. Some of them.

Q. You heard Mr. Langford testify as to what happened to him on that night in December of 1971, didn't you not? A. Yes, sir.

Q. Mr. Hassan, would it take one impact to cause this damage? A. One would be sufficient to do it.

Q. You heard him testify he hit this Chevelle at a forty-five degree angle. A. Yes.

Q. In your opinion this could have caused the tie rod damage? A. Especially if his wheel hit the frame of the other car.

Q. If that would have happened what would have happened to his steering mechanism? A. Probably exactly what happened here.

*Morris Hassan, for Plaintiff, Re-direct*

Q. What would happen? A. If the force is transmitted at the outer edge of the wheel, transmitted in this tie rod, something has to go and a tie rod would be a likely place because this next (105a) section is rather small.

Q. Let's assume the tie rod went when he hit that Chevelle. A. Assuming it failed at a point?

Q. At a point. A. All right.

Q. Would his car respond to the steering wheel? A. To the left wheel.

Q. You heard him testify the car was going to the right and he heard a snap? A. Right.

Q. Then he hit the Chevelle. A. Right.

Q. Assuming at a point the tie rod had then pried out, would he be able to turn his wheel to the left and have the car respond? A. If the car were not hindered on the right side, I would say he would be able to at least maintain the course the car was headed.

Q. Would he be able to have straightened it out? A. Yes. The steering wheel has a significant effect.

Q. If he turned the wheel to the left, as he testified, it would respond to the left? (106a) A. Not if he had the brakes locked, it wouldn't. The friction factor on the right wheel would have a friction as if the right wheel were turned out fully.

Q. What would the condition of his right tire have been? A. Tire?

Q. Yes. Would it have been canted? A. I suppose.

Q. Well, which direction would it have canted? A. Outward.

Q. You mean the bottom part caving in? A. Not necessarily, if the suspension ball joints have failed it would have collapsed inward or outward. In this case that didn't happen.

Q. You have examined this car? A. Yes, sir.

Q. You have told us that this was pried out. A. Yes.



*Morris Hassan, for Plaintiff, Re-direct*

Q. What happens when one of those gadgets gets pried out? What happens to the right wheel? A. It will probably go in a full toe out condition.

Q. What is a full toe out condition? A. It means a full turn outward. The white wheel would make a full turn.

(107a) Q. What direction would the left wheel go in? A. Whatever the direction of the steering wheel is.

Q. Would the right tire respond to the steering wheel at all? A. Not once it is severed.

Q. Would he have gotten any degree of control at all hitting the Chevelle at thirty miles an hour? A. I think the hitting of the Chevelle would have changed the direction of the car. Yes, I think the steering wheel, providing the wheels were not locked from braking, he would have gotten some response.

Q. He should have gotten out the left. A. It is speculative. I don't know how far out the right wheel was.

Q. Do you know whether the wheel was out at all? A. No, I don't know that.

Q. Actually, Mr. Hassan, you don't even know if hitting that Chevelle is what popped that thing out. A. The Chevelle?

Q. Yes. A. I cannot be certain that that particular impact did this.

Q. It may have been the impact with the retaining wall? A. Yes, it could have been that.

(108a) Q. Could it have been both? A. I think hitting the Chevelle could have bent it and perhaps the wall finished the job. In other words, pried it out.

Q. Hitting the Chevelle bent it. He should have still had some degree of steering control, shouldn't he? A. If you didn't consider the fact he was sliding down the side of another car.

Q. If he kept turning its wheel to the left he should have had some control. A. Providing the brakes weren't locked.

*Morris Hassan, for Plaintiff, Re-direct*

Q. Then he may have been able to avoid making the forty-five degree turn up on to the sidewalk? A. Yes, if both wheels were responding.

Q. Mr. Hassan, have you excluded any possibility that there could have been a malfunction or seizing of some kind in that ball joint socket prior to the impact? A. There is absolutely no indication of this in any part.

Q. You have read the American Standard Testing Bureau report, have you not? A. Yes, I did.

Q. And he said in that report that optical examination of the separated ball joint stud revealed (109a) circumferential cracks over the unthreaded shank area. Did you see such cracks? A. Yes, I did.

Q. You didn't give the same significance to that that he gave, the writer of the report? A. I guess not.

Q. Did you give it any significance at all? A. Oh, yes, very definitely.

Q. Then he said similar observations were made on the unseparated second stud on this tie rod assembly. A. Right.

Q. Did you see those cracks? A. Yes, sir.

Q. You didn't give it the same significance? A. I gave it the same significance as to the other side. The force is transmitted here. It had to be opposed by the other end. If the forces are great enough to crack this side it would crack the other side as well.

Q. Would the location of those cracks have any significance? A. Yes.

Q. Then he said the cracks on the failed ball joint were judged to be parallel to the steering line (110a) action while those on the intact inner ball stud were ninety degrees with the steering line motion. A. I read that paragraph a number of times and it doesn't make sense to me.

Q. Did you see metal spheres at any point? A. Yes.

Q. Were they of some significance to you? A. Yes, very definitely.

*Morris Hassan, for Plaintiff, Re-direct*

Q. Now, Mr. Hassan, would it be fair to say that if you had an accurate description of how this accident took place that it could be translated into some mathematical formula as to the stress that that tie rod received? A. I couldn't do it. Perhaps some type of accident reconstructionist, if he had all the facts. I doubt that very much if he could do it exactly.

Q. Exactly. But you have told us it is very significant to you, how the physical accident occurred. A. Yes.

Q. Would that have significance to you on the testing ground stuff that you do? A. Well, we don't. If we wanted to duplicate it, yes.

Q. Do you do tests on proving grounds on these tie rods? A. Very definitely.

(111a) Q. Are they tests designed to see how these tie rods stand up? A. Yes.

Q. Are the tests standardized? A. Yes, pretty much.

Q. Do you get an exact description of what the test is? A. Yes.

Q. You apply the facts you have of those procedures to the test you do on the tie rod? A. Yes.

Q. That is a very important element in your calculation? A. Not in mine but probably the stress analyst it would be.

Q. The people who are responsible for this thing? A. For the stress analysis.

Q. Deciding whether or not the car could be made safer and the apparatus be able to stand more impact or more shock? A. Generally, I guess—Yes.

Mr. Kaplan: Excuse me just one minute, your Honor. Thank you very much, I have no questions.

(112a) The Court: Any questions?

Mr. Groff: I have just one or two.

*Morris Hassan, for Plaintiff, Cross*

*Cross Examination by Mr. Groff:*

Q. I believe you said these tie rods are designed by the Chrysler people. A. Yes.

Q. And have been designed by them for many years? A. Yes.

Q. It is a standard type of tie rod that is used on many of their products, including the Dodge Swinger? A. Yes.

Q. When the car is finally sold to a franchised dealer or something, are any tests or check ups made to see that that car is properly assembled? A. Prior to delivery? Yes.

Q. Would you say that with your knowledge of the procedure at Dodge and Chrysler that this particular car was tested for proper assembly before it was sent to Woodbridge Motors? A. It was inspected.

Q. For proper assembly? A. Yes.

(113a) Mr. Groff: No further questions.

The Court: All right. Step down.

Mr. Kaplan: Judge, I would like to send the boy back to school. I don't know if we need him for anything else. Your Honor has looked at him. He was six or seven years old at the time of the accident.

The Court: It's not up to me.

Mr. Kaplan: I didn't propose to call him as a witness. All I wanted your Honor to do was look at him.

The Court: As far as I am concerned, I don't know what they are up to.

Mr. Kaplan: Beyond that I have my expert and my case will be concluded.

The Court: All right. We will recess until tomorrow morning. But before you go, I think I have a short calendar tomorrow morning. Let's see if we can fix a time at eleven-thirty. That way I will be able to get through with whatever I have to do and I can take care of you people.



**Transcript, September 11, 1973.**

United States Courthouse  
Brooklyn, New York  
September 11, 1973  
10:00 o'clock A.M.

**(2) Appearances:**

Marshall G. Kaplan, Esq., Attorney for Plaintiff.

Messrs. Markhoff, Gottlieb, Lazarus, D'Auria & Maldonado, Attorneys for Woodbridge Dodge, Inc.; by: Samuel Graffi, Esq., Of Counsel.

Messrs. Emile Z. Berman & Harold Frost, Attorneys for Chrysler Motors Corp.; by: Marvin Ausubel, Esq., Of Counsel.

**(3) (Case called.)**

Mr. Kaplan: I've written for the hospital records that I had subpoenaed.

The Court: They should be downstairs.

Mr. Kaplan: My expert ought to be here in a minute or two. We have the policeman that Mr. Ausubel said he wanted to call.

The Court: Do you have an engineer?

Mr. Kaplan: That's all I have. Except I want to offer the hospital record and the bill and I understand that Mr. Ausubel has a policeman here he wants to call, if your Honor wants him out of turn.

Mr. Ausubel: I have no objection to doing things out of turn to move thing along.

The Court: Yes.

Mr. Ausubel: I think, as I understand it from Mr. Kaplan, he is making a representation that the only other live proof that he has is the expert. The only other Exhibit he has is the hospital record.

That would normally mean that the plaintiff would rest at the end of that proof, and I assume I can bring on

*Transcript, September 11, 1973*

some motions, now subject to the proof that is forthcoming.

(4) One, particularly, since there is no doctor or dentist who is being called. I think your Honor indicated yesterday that when plaintiff, Mr. Langford, testified, he tried to describe certain conditions relative to the—

The Court: Well, he can describe what the teeth—he couldn't describe what was being done to the teeth. He could describe whether the teeth were missing or not.

Mr. Ausubel: He said they were chipped. In any event, after that, your Honor, I'm going to move to strike out his testimony upon the ground that there is no probative medical evidence or dental evidence relative to that condition.

The Court: Do you have anything?

Mr. Kaplan: Well, I have the hospital record as far as the injury. As far as the chipped teeth, Judge, I'm sure he can testify that the kid had a chipped tooth or teeth as a result of the accident. If there is some argument over it, I'd be glad to put him back on the stand to testify that before the accident, he didn't have a chipped tooth, and immediately after the accident, he did. I don't think I need a dentist to show that the trauma caused the chip in the tooth.

(5) The Court: He is six years old, and whether or not those were what they call baby teeth as compared to adult teeth or permanent teeth, I don't know.

Mr. Kaplan: I'm not going to prove any more as far as that goes. The fact that the tooth was chipped—your Honor saw it. The value you're going to put on it, if any, is yours as the trier of the facts.

The Court: If I do accept that testimony that the teeth were chipped, and whatever value I place on it. I understand what you are talking about.

Mr. Ausubel: We're talking about one chipped tooth or multiple teeth?

*Transcript, September 11, 1973*

The Court: I think he said three front teeth.

Mr. Ausubel: The dentist report that was furnished to us, discusses a single chipped tooth.

The Court: That's what it says. That's what we go by.

Mr. Ausubel: It occurred to me the fact that this is the so-called baby teeth?

The Court: I just wanted you to know what (6) I was thinking.

Would you stipulate, so that we can get over some of these problems? They are not earth-shaking, in any event. Would you stipulate to putting the dentist's report in evidence, and that would solve some problems?

Mr. Ausubel: I would have to look it over, and we'll let you know about that.

The Court: I will give it only the weight that is actually required from the testimony of the father, and not the full medical weight that would ordinarily be given on the witness stand, without conceding the truth of any part of it.

Mr. Ausubel: Without even conceding any degree of legal responsibility.

The Court: None at all. Nothing to do with the liability whatsoever.

Mr. Ausubel: Then, of course, I will have certain motions to make at the end of the plaintiff's case.

I presume your Honor wants to reserve on motions until the end of the entire case?

The Court: Are you going to have any witnesses on your side of the case?

(7) Mr. Ausubel: Yes. If I have to go into my side of the case, if your Honor denies the motions or reserves decision.

The Court: Outside of the experts, who were on the witness stand, you have some other witnesses?

Mr. Ausubel: I intend to read part of deposition, yes.

The Court: On your side of the case?

*Transcript, September 11, 1973*

Mr. Ausubel: Yes.

The Court: Why don't you reserve your motions until all the evidence is in, including your reading whatever part of the deposition you would like to read, and then the Court can make its rulings, or reserve on its rulings, and do whatever is necessary.

Mr. Ausubel: In other words, you'll reserve on all motions at the end of the plaintiff's case until the end of the entire case?

The Court: Which is proper in this type of case.

Mr. Graffi: I have one witness that I may bring in. It is my reading of the complaint here, your Honor, that this action is based upon breach of warranty or assembly. It has nothing to do with (8) negligence or improper inspection or anything like that by my defendant.

The Court: I've heard no testimony.

Mr. Graffi: Now, if my reading of the complaint then is correct, I will not bring in any witnesses.

The Court: The only testimony I've heard, it was brought in for the purpose of having it serviced, and the paper, the piece of paper is in evidence, and I will go by that piece of paper.

Mr. Kaplan: He's the primary vendor of the automobile. It's really a breach of warranty case. I don't offer any affirmative proof of his negligence.

Mr. Ausubel: Nor, for that matter, is there any proof of negligence on the part of Chrysler Motors, whom I represent.

The Court: Again, it's an issue of warranty. Whether or not it was fit for the purpose it was constructed.

Mr. Ausubel: I realize that that's the theory of the case as against Chrysler Motors Corporation. Of course, you know, there are multiple other issues relative to the cross-claims against (9) one another, and a counter-claim by Chrysler Motors Corporation against Francis Langford.



*Transcript, September 11, 1973*

The Court: Yes, I understand that, and all these will be dealt with. This Court, of necessity, will write an opinion setting forth the finding of facts, together with its conclusions.

I would suggest that all sides submit a brief to the Court, as to what you feel needs to be proven, and need not be proven, so the Court can use those in it, in determining the issues.

If you wish to get the minutes, you may.

Mr. Ausubel: I think we would have to. I think we would be obligated to give you annotated findings from the record.

The Court: Let's call the policeman, then.

Mr. Kaplan: Judge, can I offer the hospital record with the bill annexed, that's mailed from the St. Vincent's Hospital, pursuant to a subpoena.

Mr. Ausubel: I have no objection, except—any history as to the manner and occurrence of the accident, I assume is hearsay, and any other hearsay materials, we can agree upon what is hearsay, and then mask it in.

Mr. Kaplan: I don't subscribe to his view, (10) Judge. The Federal Rules of Evidence are not the State Rules of Evidence.

The Court: I understand that. In any event, the matter of history in Federal Court is not admissible under certain circumstances, where there is no proof that the statement is one either by an eyewitness or otherwise.

Mr. Kaplan: I offer it pursuant to the applicable Federal Rules of Evidence.

The Court: I'll accept it as such and I would include those matters of hearsay as the Court finds them to be, and I will enunciate them in the opinion, if necessary. It cannot be clearer than that.

The Clerk: Hospital records marked in evidence as Plaintiff's Exhibit 11, as indicated by the Court.

(So marked.)

*John D'Angelo, for Defendants, Direct*

Mr. Kaplan: There's a hospital bill in the inside folder.

Mr. Ausubel: What exhibit is that?

The Clerk: 11.

The Court: You want the policeman up here?

Mr. Ausubel: Yes.

(11) The Court: Officer?

Mr. Ausubel: Officer D'Angelo, sir.

The Court: This is on the defendant Chrysler Corporation's case. Are you resting now, Mr. Kaplan?

Mr. Kaplan: I have my expert, your Honor. He should be here any minute. He said he might be a couple of minutes late.

POLICE OFFICER JOHN D'ANGELO, called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

The Clerk: State your name, sir.

The Witness: Police Officer John D'Angelo, D'A-n-g-e-l-o. Shield Number 12930, 122 Precinct.

*Direct Examination by Mr. Ausubel:*

Q. Sit back and relax, now. Officer D'Angelo, where do you live, sir? A. Staten Island.

Q. Could you give us your home address, sir? A. 11 Connelly Place.

Q. Staten Island, New York? A. Yes.

(12) Q. How long have you lived in Staten Island? A. Approximately 39 years.

Q. Now, are you a member of the New York City Police Department? A. I am.

Q. And what is your rating, or rank? A. Police officer.

Q. Now, how long have you been affiliated with the New York City Police Department, sir? A. A little more than thirteen years.

*John D'Angelo, for Defendants, Direct*

Q. And when you went to work for the Police Department, I take it you went through the usual training?

Mr. Kaplan: Judge, I don't think we have to go through this.

The Court: Sure. That's all conceded. He's a police officer.

Q. First of all, what is your current assignment with the Police Department of the City of New York? A. Patrol.

Q. Have you ever been a member of the Accident Investigation Squad? A. Yes, I have.

Q. For how many years have you been a member of the AIS? (13) A. Four years.

Q. Did there come a time on December 3, 1971, that you were called to investigate an accident involving a Mr. Francis J. Langford? A. I did.

Q. You were here yesterday and you saw this gentleman take the witness stand, is that correct, sir? A. Yes, sir.

Q. Now, were you then—what duties did you then have? A. I responded to the scene of the accident as per radio run from Central.

Q. Did you have a radio motor patrol car? A. Yes, sir.

Q. All right.

Now, where did you go to when you got the call? A. To Victory Boulevard in the vicinity of Leroy Street.

Q. About how far from LeRoy Street was the point of the accident, sir? A. I believe it was approximately 200 feet east on Victory Boulevard.

Q. I see. Now, that would be two hundred east of LeRoy Street? A. Yes, sir.

(14) Q. Now, sir, do you know what the other street was which was west of LeRoy Street on Victory Boulevard? A. West of LeRoy Street?

*John D'Angelo, for Defendants, Direct*

Q. Yes.

Is that Cannon Street? A. No. That would be east of LeRoy Street, would be Cannon Avenue.

Q. Cannon Avenue would be east of it? A. East.

Q. Now, insofar as your investigation was concerned about, what time was it that you arrived at the scene? A. It was close to ten P.M.

Q. And when you got to the scene of the accident, did you—what did you observe, sir? A. I observed an injured child on the ground, an automobile off the road, impaled on a retaining wall.

Q. All right.

Now, I'm going to show you these photographs. I'm going to ask you if these photographs fairly and accurately represent the condition of that impaled vehicle on the retaining wall as you saw it? A. Yes, it does.

Q. All right.

Mr. Ausubel: I offer these three photographs (15) in evidence.

Mr. Kaplan: I have no objections.

The Clerk: Three photographs marked in evidence as defendant's Exhibits I, J and K.

(So marked.)

Mr. Ausubel: I don't know if your Honor cares to see these?

The Court: Yes.

(Pause.)

The Court: All right.

Mr. Ausubel: May I use them?

The Court: Sure.

By Mr. Ausubel:

Q. Now, Officer, did you make any inspection of any damage to this automobile that you observed, which is portrayed in Defendant's Exhibits I, J and K? A. Some.



*John D'Angelo, for Defendants, Direct*

Q. And did you inspect it for any damage to the vehicle, as well as any damage to the retaining wall? A. Well, I had to make a preliminary inspection to put on my accident report.

Q. Yes. A. I did observe the damages in this photograph.

Q. I see. Now, did you observe in one of these (16) photographs, there is a poster which is knocked over and another piece; do you see that? A. Yes.

Q. That's in defendant's Exhibit I, is that correct, sir? A. Yes, sir.

Q. And was that the condition as you found it at the scene, when you got there? A. I believe so.

Q. Was that post, brick post, knocked over? A. Yes.

Q. Now, was there damage to the right front section of this car, that's portrayed in these three photographs, Defendant's Exhibits I, J, and K? A. Yes, sir.

Q. How would you describe that damage, sir? A. Well the complete right front of the bumper above the hood, grille, wheel, is all pushed in.

Q. And was the right front tire flat? A. I don't recall at this time.

Q. Well, I'm going to show you this photograph which is figure 2 of the Plaintiff's photograph, and I'm going to ask you whether that—well, maybe there is a better one.

(17) Mr. Ausubel: There is a picture which is in evidence from yesterday.

The Court: Who has all the Exhibits?

Mr. Kaplan: Picture in evidence, showing what?

Mr. Ausubel: Shows a flat tire and broken tire rod.

Mr. Kaplan: Judge, these pictures are pictures that obviously weren't taken at the scene of the accident. This picture that he's referring to—I object to his leading the officer, in any event. There's no reason why the officer can't testify to what he observed.

*John D'Angelo, for Defendants, Direct*

The Court: I don't know what he's going to testify to.

Mr. Ausubel: This photograph is in evidence. It's not in the courtroom. Apparently, all the exhibits were given to Mr. Morfopoulos, the plaintiff's expert, and he took them home with him last night.

Now, yesterday, the plaintiff identified these photographs that are in evidence, as being the condition of the car as he found it on the top of the retaining wall. If that photograph were here in court—I will have to borrow, apparently, a duplicate (18) of it. I don't know which one is in evidence.

The Court: I don't know.

By Mr. Ausubel:

Q. In any event, by looking at figure 7, does that refresh your recollection that there was a flat tire on the right front wheel? A. It does.

Q. Now, officer, as part of your investigation, did you ascertain who was the owner of that car that was impaled on top of the retaining wall? A. I did.

Q. And who did you learn was the owner? A. Mr. Langford.

Q. And is that gentleman in court today, and was he here yesterday? A. Yes, sir.

Q. Did you have a conversation at the scene with Mr. Langford, relative to this accident? A. I believe so.

Q. And what did Mr. Langford tell you? A. Well, I believe in his dazed condition, he stated he lost control, somehow. I don't recall how.

But he did lose control, he stated to me.

Q. Now, did he ever tell you that he heard a snapping noise in the right front section of the car, before—

(19-20) Mr. Kaplan: Your Honor—go ahead, I'm sorry.

The Court: Go ahead.

*John D'Angelo, for Defendants, Direct*

Q. —before he was involved in a collision with any car or retaining wall?

Mr. Kaplan: I'm going to object to this, your Honor. There's no requirement that he tell him anything. He told the whole conversation and he shouldn't be leading the witness anyhow. It's his witness.

The Court: He can ask him if he told him that.

Q. Did he ever tell you that, sir? A. No.

Q. Did he ever tell you he had any trouble steering the car at any time? A. No.

Q. Now, officer, did you observe whether this car had been in a collision with any other car? A. Yes, there was a parked vehicle.

Q. Where was that car parked? A. Just before the retaining wall.

Q. And what kind of a car was it? A. I believe it was a 1965 Chevrolet.

(21) Q. Did you get the identification of that car? A. Yes, I did.

Q. Now, did you observe any skid marks, or tire marks which led up to Mr. Langford's car? A. No, sir.

Q. Now, following your investigation, were you required to make out a detailed report in connection with this accident? A. Yes, sir.

Q. Was this made out shortly after investigation of this accident? A. Yes, sir.

Q. Now, I'm going to show you this two-page document. I'm going to ask you if it bears your signature, and whether this is a report that you made out in connection with your investigation of this accident? A. It is.

Q. Were you required to make out such a report?

Mr. Kaplan: Judge, I have no objection to his offering all the reports he made. Offer them all. It's all right. You don't need any of the buildup.

*John D'Angelo, for Defendants, Direct*

The Court: You can offer them. It's his report.

(22) Mr. Kaplan: You've got this UF 61. You can put that in also.

The Court: Give them to the Clerk.

Mr. Graffi: May I have them?

Mr. Ausubel: I'm at a loss to understand this kind of an outburst.

The Court: All right.

The Clerk: Report marked in evidence as Defendant's Exhibit L.

(So marked.)

(23) Q. Now, did he tell you that there was any machinery wrong with the car at any time before this collision?

Mr. Kaplan: I'm going to object to this line of questioning, your Honor.

The Witness: No.

The Court: You're presuming that he asked him whether there was anything wrong.

Mr. Ausubel: Your Honor, yesterday I specifically asked the plaintiff whether he had a conversation about the mechanical condition of the car, specifically about a noise or steering deficit and the witness claims he did tell it to the police officer, and I have a right to have the police officer tell his version of it.

The Court: I don't think that was the testimony. I think the testimony yesterday was whether or not he had told the police officer that he had heard a—what kind of a sound—a snapping sound. First he said he didn't recollect whether he had or not. Then he said after that, I believe he said that he did tell him that he heard a snapping sound.



*John D'Angelo, for Defendants, Direct*

Mr. Ausubel: Yes. He did say that he told the police officer that he had trouble with the (24) steering of the car.

The Court: It's easy to allow the question. I'll allow it.

Mr. Graffi: It also goes to the credibility of the Langford's testimony.

Mr. Kaplan: Either the policeman had an obligation to ask him or he had an obligation to answer him.

The Court: He may answer.

The Witness: Could you repeat the question, please.

By Mr. Ausubel:

Q. Did he say anything to you while you were talking to him, anything, following this accident; did he say anything to you in which he made any complaint about the mechanical condition of the car? A. No, he did not.

Q. Now, on the second page of plaintiff's exhibit L were you required to make a notation if there was any evidence of any unsafe equipment on the car to make some notation on that form? A. Yes.

Q. And did you make any notation of any unsafe equipment on that vehicle? (25) A. No.

Q. Now, you drew a diagram, did you not, on this form which purported to be the path of the Langford vehicle; is that correct? A. Yes, sir.

Q. And was that as best as you recall substantially the path that the vehicle took? A. Yes, sir.

Mr. Kaplan: I'm going to object to this, if your Honor please, unless he saw the vehicle take some path.

The Court: Yes. How would he know that.

Q. You spoke to him, did you not?

*John D'Angelo, for Defendants, Cross*

Mr. Kaplan: I'm going to object to this now.

The Court: It's whether or not he knows what path the vehicle took.

The Witness: Based on my observations of the area, I drew that conclusion.

The Court: Do you know of your own knowledge what path the vehicle took?

The Witness: No.

The Court: He didn't see it take any path?

The Witness: No, I didn't.

(26) The Court: You came after all this had happened?

The Witness: Yes.

By Mr. Ausubel:

Q. You did speak to him, sir, about his version of the accident? A. Yes, sir.

Mr. Kaplan: I'm going to object to this.

The Court: Whatever he told you you wrote down; is that what you are telling us?

The Witness: Yes.

Q. Now, Officer, did you observe any damage to the parked car, that 1965 Chevrolet? A. Yes, sir.

Q. And where was the damage to this car, sir? A. Along the left side.

Q. The entire left side? A. I believe so.

Q. All right.

Mr. Ausubel: You may inquire.

*Cross Examination by Mr. Kaplan:*

Q. Officer, when you got there it was dark, I take it?  
(27) A. Yes.

*John D'Angelo, for Defendants, Cross*

Q. And it was a cold December night? A. Yes.

Q. And when you got there, did you see this boy who was in court yesterday, Frank Langford which blood on his face? A. Yes, I did.

Q. And he was out of the car? A. Yes, sir.

Q. And I assume his father was very much concerned about him? A. Yes.

Q. Did you ask him if he wanted an ambulance? A. It's automatically responding, sir.

Q. You told him that an ambulance was coming? A. Yes, sir.

Q. You didn't write that down in any of your reports that you told him an ambulance was coming? A. It's not necessary.

Q. Now, Officer, you write down everything that he told you? A. Everything pertaining to the immediate collision.

Q. And do you have a book? A. I do.

(28) Q. May I see the book, please? A. Start from this point on.

Q. Okay. Now, this memo book, did you make the memo in the book contemporaneously with what you did at the scene of the accident? A. I believe so.

Q. You have gone over this memo since you were subpoenaed to court here? A. Yes.

Q. You've got nothing written in here about any observations with anybody? A. No.

Q. Officer, at that particular time you were on ordinary radio motor patrol were you not? A. I was.

Q. Have you been doing the same job ever since? A. Ever since the accident?

Q. Ever since this incident? A. Yes.

Q. And were you doing it before this incident? A. I have.

Q. I take it in the normal course of your duties in Staten Island you responded to many and many an accident? A. That is right.

*John D'Angelo, for Defendants, Cross*

(29) Q. Of all kinds? A. Correct.

Q. Involving all kinds of cars and all kinds of people?  
A. Yes, sir.

Q. Do you have an independent recollection of each and every one of these accidents? A. No, I don't.

Q. Do you have an independent recollection of this particular accident, Officer? A. Vaguely.

Q. I assume that since you responded to investigate this accident you've investigated many more and responded to many more? A. Yes, sir.

Q. And at all of these incidents I suppose you talked to various people? A. Yes, sir.

Q. You don't remember those conversations, do you, specifically? A. Well, if there was something specific that caused a particular accident and it was stated to me at the scene of the accident?

Q. Yes. (30) A. I would make sure that it would be in my memo book or in my report or both.

Q. So if something specific was said to you you would have written it down? A. Yes, sir.

Q. How long do you think you spoke to him on that evening? A. A couple of minutes.

Q. Couldn't have been very long, could it? A. No, sir.

Q. Was he with his son all the time? A. I don't recall.

Q. You don't recall that. Do you recall how long it took the ambulance to respond? A. Maybe five minutes from the time of my arrival.

Q. And there were a number of other people around the scene by the time you arrived there until the time you left, were there not? A. Yes, sir.

Q. Did you talk to others? A. My job is to try to locate a witness. But I don't believe I located one at that time.

Q. Well, you must have talked to people to find out if there were witnesses? (31) A. Yes.



*John D'Angelo, for Defendants, Re-direct*

Q. You don't recall specifically to whom you talked or how many people you talked to to try to locate a witness? A. No.

Q. In any event you didn't locate a witness? A. I don't believe so.

Q. Was it your job to climb under that car to take a look at the undercarriage? A. No.

Q. You didn't do that, in any event? A. Just general observation.

Q. While you were standing and walking around, this was in the dark, was it? A. Yes, sir.

Q. You didn't come back there the next day in the light to look at the car, did you? A. No, I did not.

Q. You did not.

Now, Officer, if I asked you specifically to tell me the specific conversation you had with this man, Mr. Langford; I said this, he said that; would you be able to tell it to me? A. I don't believe so.

(32) Mr. Kaplan: All right. I have no further questions.

The Court: Step down.

Mr. Ausubel: Just a minute. I have a couple of questions.

The Court: All right.

*Re-direct Examination by Mr. Ausubel:*

Q. Was it clear out that night? A. Yes.

Q. And is Victory Boulevard a well lit thoroughfare? A. Yes.

Q. Was there a utility pole right in the area where the accident occurred? A. Yes.

Q. And was this car, the length of the car, lodged against the utility pole? A. Yes, sir.

*John D'Angelo, for Defendants, Re-cross*

Q. Now, insofar as your conversation with Mr. Langford was concerned—

Mr. Ausubel: May I have that Defendant Exhibit L.

Q. If Mr. Langford had mentioned anything about a (33) steering defect or a snap, hearing a snap in the right front of the car, would you have recorded that in your book? A. Yes, sir.

Mr. Kaplan: I'm going to object to that, if Your Honor please.

Mr. Ausubel: He brought this out on cross examination.

The Court: I'll allow it. All right.

The Witness: Yes, sir.

Q. And would you have noted something on Plaintiff's Exhibit L in evidence with respect to that claim? A. This column here.

Q. Yes. A. Where it says equipment, yes, sir.

Q. That it had unsafe equipment? A. Yes, sir.

Q. There was no notation of that in your book or on your report about any such claims of a snap or steering defect; is that correct? A. Right.

Mr. Ausubel: That's all.

*Re-cross Examination by Mr. Kaplan:*

Q. Tell me again, how long did you say you spoke to (34) him that night? A. A few minutes.

Q. How long would a few minutes be? A. I don't recall, specifically.

Q. You don't recall specifically? A. No.

Q. Do you recall how many questions you asked him specifically? A. No, I don't.

*John D'Angelo, for Defendants, Re-direct*

Q. No. Well, when you saw him with the kid, where was the kid, specifically? A. He was on his face on the ground.

Q. Was he sitting or lying? A. He was lying.

Q. And he was bleeding from the face, wasn't he? A. Yes.

Q. Was the father bending over him? A. No.

Q. What was he doing? A. He was in a daze standing around.

Q. He was in a daze. So the answer is he was in a daze when you talked to him? A. Correct.

Q. Now, Officer, as a matter of police procedure, (35) as part of your investigation you noted the condition of the driver, didn't you? A. Yes.

Q. Other than him being in a daze, was his condition normal? A. I believe so.

Q. I mean, he wasn't drunk, didn't look like he was impaired by drugs or liquor or something else that would require you to take police action? A. From observation, I don't believe so.

Q. You didn't take any police action at all, did you? A. There was no police—

Mr. Ausubel: Objection, your Honor.

The Court: Sustained. It doesn't make any difference whether he took police action.

Q. Was he in a daze all the time you were talking to him? A. I don't recall.

Q. But you recall specifically the man was in a daze? A. The man was shook up.

(36) *Re-direct Examination by Mr. Ausubel:*

Q. He was shook up and coherent? A. Yes, sir.

Q. You understood him and he understood you? A. Yes, sir.

*Vasilis Morfopoulos, for Plaintiff, Direct*

Mr. Kaplan: I'm going to object as to what he understood.

The Court: That's right.

Q. He responded to your questions? A. Yes, sir.

Q. He told you his version of the accident?

Mr. Kaplan: I'm going to object to this, your Honor.

The Court: We've been all through this. You can step down.

All right. Next witness.

---

VASILIS MORFOPOULOS, called as a witness, first having been duly sworn by the Clerk of the Court was examined and testified as follows:

The Clerk: State your name, sir.

The Witness: Vasilis V-a-s-i-l-i-s, Morfopoulos M-o-r-f-o-p-o-u-l-o-s.

(37) *Direct Examination by Mr. Kaplan:*

Q. Now, Dr. Morfopoulos, what is your occupation? A. I'm Consulting Safety Engineer employed by the American Standards Testing Bureau Incorporated, in the capacity of its Technical Director.

Q. What is your educational background? A. I've a Bachelor of Science Degree in Materials Engineering awarded by Purdue University in 1958; and a Master of Science in Engineering also awarded by Purdue in 1960; and a Doctorate in Engineering awarded by Columbia University in 1964.

Q. What is your professional experience? A. Prior to associating with the Bureau in 1965, I have taught and conducted research at Purdue University, the City University of New York and Columbia University.



*Vasilis Morfopoulos, for Plaintiff, Direct*

Mr. Ausubel: Excuse me. I didn't hear. I'm sorry. I'm have a little difficulty.

The Court: Columbia University.

A. (Continued) And I have worked in the industry for the United States Steel Corporation and the United States Atomic Energy Commission. I joined the Bureau in 1965 and I have been with them ever since.

Q. Have you published any scientific works, Doctor? (38) A. Yes, sir. I have approximately 25, 28, I would say, publications that appeared in technical journals in this country, Canada and England.

Q. In what Societies do you hold memberships? A. I am an elected member to approximately a dozen engineering societies, among which. The Society of Automotive Engineering, the American Society of Safety Engineering, The American Society of Engineering Education, The American Society of Testing and Materials, The American Society of Metals and The American Institute of Metallurgical Engineers and various other organizations.

Q. Specifically, what do you and what do American Standards Testing Bureau do? A. The Bureau is a private independent nationwide consulting organization that engages in research and development and technical studies with special emphasis to safety, property or materials, standards for products equipment and safety systems. Our services are retained by the industry, the profession and Government in matters relating to materials, equipment and safety.

Q. And specifically have you had experience with the type of material that's the subject of this lawsuit, tire rods, automobile steering and so on? A. Yes, sir I have. My area of specialization is (39) automotive equipment and industrial equipment. I have had extensive experience with vehicles of this type with steering systems and tire rods involved in similar or identical systems on automobiles.

*Vasilis Morfopoulos, for Plaintiff, Direct*

Q. Doctor, 1972, were you authorized by Mr. Langford to make an inspection or an investigation with respect to an automotive failure on his 1971 Dodge Swinger? A. Yes, I was.

Mr. Kaplan: May I have the parts, please, of Plaintiff's Exhibit 2?

Mr. Ausubel: They are in Court.

Q. Now, Doctor, the pieces of metal or parts which are contained in the box, Plaintiff's Exhibit 2, were those the materials that were taken from Mr. Langford's car? A. Yes, sir.

Q. And can you explain to the Judge exactly what is involved in the materials and parts in that box?

Mr. Ausubel: Before we get into this, can we have some identification of when and where and dates and things of that nature as to when these examinations were conducted.

Mr. Kaplan: I just asked him if those were—to explain the parts.

Mr. Ausubel: Before you explain the parts, the foundation.

(40) By Mr. Kaplan:

Q. Doctor, when did you obtain these parts? A. Well, first contact with the accident vehicle, was on or about February first. I inspected the vehicle in an auto salvage pool yard in Newark, New Jersey.

Subsequent to that, authorization was obtained from the owner to physically remove the ball joint tire rod assembly and this was removed by me, on or about March 13, of 1972.

Mr. Ausubel: Excuse me. Your Honor, may I have a few questions preliminarily on the *voir dire* about the circumstances of the examination?

*Vasilis Morfopoulos, for Plaintiff, Direct*

The Court: Go ahead.

*Voir Dire Examination by Mr. Ausubel:*

Q. Dr. Morfopoulos, I have issued a subpoena to your firm, have I not, last Thursday? A. I believe you have.

Q. Have you produced the records that I subpoenaed?

Mr. Kaplan: If your Honor please, if he's talking about the records with relation to this, these materials, his records are here. This is improper *voir dire*.

The Court: Let me find out what you are talking about, what records you are talking about?

(41) Q. Did you produce all the records that were subpoenaed? A. Yes, I have.

Q. Do you have those records with you? A. Yes.

The Court: You can't look at those now.

Mr. Ausubel: I'm not looking at them now.

Q. Amongst other things, I asked that you produce work notes, in connection with the examinations that were conducted on this vehicle? A. I have my report here.

Q. Other than the report, do you have the work notes? A. They are discarded after the report is made.

Q. The work notes from which you transcribed the report? A. Those are dictated and transcribed. There are no work notes.

Q. When somebody goes out to New Jersey to look at a vehicle, doesn't somebody make some notes? A. I record my observations and I take those photographs.

Q. Where are the underlying materials from which the reports are made? A. In the report.

Q. I'm asking for the notes or transcription before (42) the report is typed up. A. The transcriptions are not maintained. Those are discarded in the report.

*Vasilis Morfopoulos, for Plaintiff, Direct*

The Court: Did you destroy them?

The Witness: Those are transcriptions. Those are transcribed by the typist into the report.

The Court: You don't have them?

The Witness: They use the tapes over and over again.

The Court: He's talking about taped transcriptions. They use them over and over again.

Q. Are you saying that you took a tape recorder with you to New Jersey? A. That's right.

Q. Do you have the specific date that you went out to New Jersey? A. Yes, sir.

Q. What date was that? A. This was February 1, 1972.

Q. February 1 was the date you got the request; isn't that a fact? A. I believe that was on that date that the inspection was made.

Q. When you say "you believe", it means you are not (43) certain whether it was sometime between the first and the seventeenth, when you got up the report, isn't that a fact? A. As I said, it was on or about February 1st. I don't specifically remember.

Q. Could it have been the fifth or tenth? A. No. It was immediately after the request. I remember, because there was a pressing need to view this car which was out in the salvage pool yard.

Q. You know this accident happened on December 3; is that correct? A. That's correct.

Q. Do you know how this vehicle got from the scene of the accident to New Jersey; did you physically see how it got there? A. No, sir, I did not.

Q. Do you know if there was any damage to the vehicle while it was being transported? A. No, sir, I do not.

Mr. Ausubel: Now, your Honor, there's been no foundation that's been laid here for this expert to



*Vasilis Morfopoulos, for Plaintiff, Direct*

testify, since there is no foundation laid that the conditions at the time of his examination were the conditions at the time of the accident. There's a hiatus of two months.

- (44) Mr. Kaplan: Well, to begin with, Judge, the parts are already in evidence without objection. That's the first thing.

The second thing is, if you listen to his testimony, his testimony will indicate that his findings had nothing to do with the trauma, and nothing to do with the changed condition, and there's no reason for him to anticipate his testimony, because he hasn't testified.

The Court: Is he going to testify as to what he found in those parts?

Mr. Kaplan: He's going to testify about the ball joint socket, which he's going to testify had nothing to do with the trauma or collision or accident. That's what is in his report, which he has had for several months now, and which he is very well aware of.

Mr. Ausubel: That still doesn't lay a foundation for having an expert testify to conditions that are obtained sometime in February, in 1972, on an accident that occurred on December 3, 1972, when there's a gap of two months, and a total lack of explanation as to what was done with the vehicle during that two months.

- (45) The only testimony in the case was that the succeeding morning, that the car was towed to a wrecker in Stapleton, Staten Island, and nobody knows how it got from the scene of the accident to Stapleton, or, in turn, from Stapleton to New Jersey.

The Court: All right. When it got to New Jersey, was the vehicle in a lot in New Jersey somewhere?

*Vasilis Morfopoulos, for Plaintiff, Direct*

The Witness: Yes, it was.

The Court: Was it assembled or disassembled?

The Witness: It was fully assembled, and apparently not tampered with since the time—

Mr. Ausubel: Your Honor, I move to strike out his testimony.

The Court: Was it assembled or disassembled?

The Witness: It was fully assembled and not tampered with.

The Court: Now, when you looked at the vehicle, under the vehicle, what was the condition of the tie rod and the ball joints at that time?

The Witness: They were—

The Court: Describe to me what you saw?

The Witness: All right. In fact, I photographed (46) what I saw. But basically—

The Court: You have a photograph of what you saw?

The Witness: Yes, sir.

The Court: Where is the photograph?

The Witness: In fact, it's in evidence, I think.

Mr. Ausubel: Excuse me, your Honor. Can I ask one question along that line?

By Mr. Ausubel:

Q. As a matter of fact, you found evidence, did you not, that there was a mechanical deformation to the threaded arm of the ball joint, which was secondary damage, sustained by that component, during post-handling of the accident vehicle? A. I ascribed it—

Q. Did you so find it, sir? A. I said I—

Q. Could you please answer my question?

The Court: Let me be the Judge and decide what's going to happen.

*Vasilis Morfopoulos, for Plaintiff, Direct*

The Witness: Some of the damage, in my estimation, was secondary to the failure of the ball joint.

Mr. Ausubel: I move to strike out his answer (47) as not responsive.

The Court: Did you make that statement in your report?

The Witness: Yes.

The Court: Yes. All right.

Mr. Ausubel: Your Honor, again, I'm addressing myself to your Honor's rulings on this matter.

We're not being confronted with an examination.

The Court: We have in evidence the photographs of the automobile identified as this automobile which the plaintiff says is what it looked like at the time of the accident.

Mr. Ausubel: Yes.

The Court: Which we now find that he took—it doesn't make any difference whether it's two months later, or fifteen months later. If that is what it looked like at the time of the accident, or at least if it is an accurate representation, that's sufficient under New York Law.

Mr. Ausubel: Yes. Now, he's going to testify about an examination of the vehicle.

The Court: True. If the vehicle looked like what those photographs depicted it to look like at the date of the accident, he can testify.

(48) I'll overrule the objection at this time.

I have to think of the name of the case.

*Continued Direct Examination by Mr. Kaplan:*

Q. Did you remove those parts from this automobile?

A. Yes, sir. I removed the tire rod assembly, including the tire rod end and the two ball joint studs.

*Vasilis Morfopoulos, for Plaintiff, Direct*

Q. Now, will you describe to us what you did? A. Referring to the tire rod assembly piece, in Exhibit 2, I physically removed the castellated nut from the—the inboard tire rod end, and I freed this entire piece, the long piece, which is otherwise shown in its position in Exhibit B and C in evidence.

Then I removed the castellated nut and I freed the separated outboard ball joint stud. I took these materials into the laboratory, and I conducted an examination and a failure analysis study.

Q. Would you tell us what your examination consisted of? A. The examination consisted of visually and microscopically examining this assembly, and its component part in sectioning the severed ball joint socket and removing some of its component parts; determining the condition of the interior surface of the ball joint socket; determining the metallurgical characteristics (49) of the ball joint socket material.

Q. Would you tell us what your finding was? A. Yes, sir.

This tire rod assembly shows signs, obvious signs of impact damage.

Q. Can you show the Judge where you see the impact damage? A. Certainly. The slight bowing or deformation in the connecting sleeve. The outward curvature in the tire rod and component, are indications of impact damage.

The socket shows an obvious area of a pry-out separation of the ball joint stud from the socket.

Now, this separation has happened forward. In other words, the stud has been pried out in the forward direction with respect to the axis of the tire rod assembly. Those are the gross visual observations that can be made by visually examining this part, without any assistance from a microscopic system.



*Vasilis Morfopoulos, for Plaintiff, Direct*

Once the ball joint socket was emptied from its part, an examination of the bearings of the upper portion of the socket was performed by means of the microscope, in that area, I found a substantial amount of metal smeared in and around the areas, and underneath the areas, where the ball joint stud was eventually forcibly removed in a forward direction.

(50) Now, I must say that this severance in the forward direction is opposite to the effect of bending the assembly backwards.

So, we have actually three items. Three conditions, or three events.

Namely, the presence of metal smeared deposits inside the ball socket, predating the severance of the ball joint.

We have the upsetting of the ball socket in one instance. One moment, when the stud was pried out of the socket, and then we have the bending of the stem backwards in a direction opposite to the pry-out direction of the socket.

Those were the visual and optical microscopic observations.

The third thing I did was to subject a section of the socket to metalgraphic and metallurgical examination. In doing so, I found that the material or construction of the socket consisted of a medium carbon steel.

Normalized or treated to a hardness of approximately 90 units in the Rockwell B scale, and I will come back to the hardness determinations.

But it was normalized and the microstructure was basically of a pearlitic nature. The section cut from the socket was cervated to determine its hardness, and the hardness ranged between 88 and 94 units on the Rockwell B scale.

(51) The hardness of the upper bearing section of the ball stud was considerably higher, and that surface was likewise examined in a microscope.

*Vasilis Morfopoulos, for Plaintiff, Direct*

It was found to contain, in addition to the obvious pry-out damage, which by the way, has resulted in the deformation of the bearing, and also the cracking of the bearing in two areas. It contains gaulling marks and abrasions on the portion of the surface that did not participate in the pry-out process.

This surface condition of the upper bearing is consistent of—I'm sorry—is consistent with the pre-damage—

Mr. Ausubel: Just a minute.

Your Honor, the witness was asked to describe what he found, not what his opinions are.

The Court: Right. At this point—

Mr. Ausubel: I move to strike it out.

Q. Just tell us what you found? A. The condition of the bearing under the microscope clearly indicated abrasions and gaulling damage in an area especially relating to the smeared metal area inside the socket. This is the extent of the measurement, examination and observations I made.

Q. Now, doctor, from what you saw and the tests you made, and based on your experience in this field, were you able to draw some conclusions? (52) A. Yes, sir, I was.

Q. Now, will you tell us what your conclusion was?

Mr. Ausubel: I object to the form of this question, your Honor.

The Court: Yes. The form is bad.

Q. Within a reasonable degree of engineering certainty, or the certainty that pertains to your scientific discipline, were you able to form a conclusion based on your observations, whether or not there was some defective part or parts before the impact described in this trial?

Mr. Ausubel: Again, I raise the same objection. This is leading and suggestive of an answer.

*Vasilis Morfopoulos, for Plaintiff, Direct*

Yesterday, your Honor placed some limitations upon the questions that I could propound to Mr. Cashell (phonetic).

The Court: I think I permitted you to ask most of them after a while for the same reason that it is a non-jury case, and I have to make my mind up. It is a kind of a leading question, you can't deny that.

Mr. Kaplan: I'll rephrase it in any way he wants.

Q. Within a reasonable degree of engineering certainty, were you able to form some opinions as to those parts (53) you were handling? A. Yes, I was.

Q. All right. Tell us what your opinions were. A. In my opinion, the union between the ball stud and the interior—

Mr. Ausubel: Excuse me. This box is blocking my view.

A. I think I may need the box.

Mr. Ausubel: I'm sorry. Can I put it here?

The Court: Put it right here.

Mr. Ausubel: Do you mind if I look at what you're demonstrating?

The Witness: No problem.

The Court: All right, go ahead.

The Witness: There was a pre-existing tightness and eventual seizure of the ball joint inside the socket. This created the metal-smeared deposits inside the socket.

It created the imperfections or the gual marks on the upper bearing of the ball stud. It eventually caused the stud to be in a peculiar angularity, directed outwards toward the right wheel, and that impaired the steering ability of the car, which eventually was involved in a front, right front (54) collision that pried the so-oriented stud. It caused it to be pried off out of this socket.

*Vasilis Morfopoulos, for Plaintiff, Direct*

Of course, beyond that point, there was no steering ability under any circumstances or no connection between the steering system and the right front wheel.

Q. Now, doctor, what facts did you rely on specifically in coming to this conclusion? A. I relied upon the condition of the socket. The condition of the stud bearing, the upper bearing.

The fact that the smeared metal is all around the upper area of the socket, and below the damage caused in the pry-out process.

Q. Now, doctor, in your opinion, within a reasonable degree of scientific certainty, was this condition that you've talked about with respect to this ball joint socket, in any way connected to an impact, or a trauma to this part of the vehicle? A. No, sir, the condition I described, pre-existed the singular event of an impact. Instantaneous pry-out condition.

The metal smears. The smeared metal deposits inside the socket were the product of a wear and tear process previous to the pry-out.

Q. And had nothing to do with the accident, in your (55) opinion? A. Well, they caused the unserviceability of the system. They are not related to the pry-out process.

Q. Now, doctor, did you have an opportunity to go over the plaintiff's Exhibits with respect to the standard of Chrysler automobiles, with respect to this part? A. Yes, sir.

Q. Did you make any observations with respect to, as compared to this part? A. Yes. Aside from geometric specifications, the manufacturer's requirements, called for a minimum of 90 units of Rockwell B.

Mr. Ausubel: Just a minute. I object to the form of this question. If he's referring to some specific document, we ought to know what document he's referring to.



*Vasilis Morfopoulos, for Plaintiff, Direct*

The Court: Yes; what is he referring to?

The Witness: I'm referring to the specifications for the ball socket.

The Court: What's the exhibit number on it?

The Witness: I'll give you the exhibit number.

Mr. Ausubel: May I have Mr. Cashell here?

(56) The Court: He has a copy of it, doesn't he?

Mr. Ausubel: He took his copy.

These are the exhibits which were in court yesterday, which Dr. Morfopoulos took home with him.

The Witness: I am referring to Exhibit 4 in evidence.

Q. What does Plaintiff's Exhibit 4 show? A. The specifications for the tire rod end, including those for the socket.

Q. All right. Now, with respect to those specifications, Plaintiff's Exhibit 4, can you tell us what, if anything, you observed with respect to this part, Plaintiff's Exhibit 2. A. Well, I found that the hardness of the socket material, was at least two units below the minimum requirement.

As I indicated before, the hardness ranged between 88 and 94; in that area.

Q. What was the Chrysler specification? A. 90 minimum.

Q. You found the range to be between 88 and 94? A. Yes.

I must say this is not an extremely different value. 88 and 90, is not very far. Yet, the lower hardness and the makeup of this particular ball joint, are consistent with (57) the smeared metal deposits that I observed in that area.

Q. What would the lower unit show, a softer, greater degree of softness? A. That's correct.

*Vasilis Morfopoulos, for Plaintiff, Direct*

Q. And the greater degree of softness would result in what; more smearing or less smearing? A. Yes. It would result in a more pliable, more susceptible to smearing metal under surface compression or surface compressive forces which are expected to be found in a tight ball joint assembly, especially if it's enclosed with a seizure limit.

(58) Q. Now, have you gone through the rest of the specifications, Doctor? A. Yes, I have.

Q. Is there anything that is contrasted between specifications and the part? A. No. I would say the part in general is according to specifications, with the exception of an undesirable seizure or smearing of metal inside the ball socket.

Q. Doctor, in your opinion, within a reasonable degree of scientific certainty, is the condition that you found in this part, consistent with the loss of control to the car?

Mr. Ausubel: Your Honor, that's repetition of what the witness just said.

The Court: It is repetitious.

Mr. Kaplan: All right.

You may inquire. He does the same thing he accuses me of.

The Court: We're doing very nicely. We don't need that.

Mr. Ausubel: Your Honor, I'll proceed, but I'll need some time to talk to my people.

The Court: I want to finish before lunch, so we're going to finish with this case, and lunch doesn't mean one o'clock. So don't worry about it.

(59) Mr. Ausubel: Would you mind, after I'm under way in cross for a little while,—

The Court: I'll give you about five minutes.

*Vasilis Morfopoulos, for Plaintiff, Cross*

*Cross Examination by Mr. Ausubel:*

Q. First, doctor, I asked you before, whether you had produced all of the records which I called for in my subpoena *duces tecum*.

You were indeed served with one last Thursday? A. Yes, sir.

Q. Have you produced all the records called for in the subpoena? A. Yes, sir, I have.

Q. Do you have a record, for example, of all the cases you have testified in as an expert witness?

Mr. Kaplan: Your Honor, I would like to offer a copy of the subpoena, and with respect to item two, I would move to quash it. For any lawyer to issue a subpoena in this form to any witness is—

The Court: You wouldn't be entitled to that.

Mr. Kaplan: I move to quash it.

Mr. Ausubel: May I have it marked for identification?

The Court: Do you know what it would be (60) if every doctor had to come here and tell us of every patient he saw. It's an unreasonable demand.

Mr. Ausubel: I don't wish to argue with your Honor. I represent a client.

The Clerk: Document marked for identification as Defendant's Exhibit N.

(So marked.)

Mr. Ausubel: I wouldn't pursue it, but I had proposed to inquire concerning the subject matter of the subpoena *duces tecum*.

Since your Honor foreclosed me, that's the end of it.

The Court: I foreclosed you and I'll stand on my position.

*Vasilis Morfopoulos, for Plaintiff, Cross*

Q. Doctor, you say that the underlying notes or materials you used in the preparation of your two reports, have since been destroyed; is that correct? A. As I said, these—

Q. Could you answer my question, yes or no?

The Court: You can answer that yes or no. If it's no longer on the tape, it's destroyed.

The Witness: Right, with the exception of the photographs which are also records, and these are definitely maintained.

(61) Q. So what you had left after the obliteration or destruction of the underlying work notes, were the two reports that you ultimately sent to the lawyers together with some photographs you took; is that correct? A. And microphotographs, correct.

Q. These two reports are the only documents, together with the photographs that you have to refresh your recollection as to what examinations you conducted; both in New Jersey and in your laboratory, and what findings you made; is that correct, sir? A. That's correct.

Q. Now, after you dictated those reports, they were sent out; is that correct? A. Yes, sir.

Q. Now, sir, this was in February, February 17 was one report, and then you sent out another one on March 13, 1972; is that correct? A. This is correct.

Q. There was an interval of time after your initial inspection in February before the car was disassembled; is that right? A. That's correct.

Q. Was that sometime in March of 1972? A. That's correct.

(62) Q. And then you took these parts back; is that right? A. Right.

Q. And after you dictated the report, somebody signed the report on your behalf; is that correct? A. I presume they did, yes. In other words, my secretary, who transcribes the report, normally signs my name.



*Vasilis Morfopoulos, for Plaintiff, Cross*

Q. When your name appears on the bottom of the report, this is your report of your examination, and that's your practice in every case with the American Standards Testing Laboratory; is that correct? A. That's correct.

Q. Now, doctor, for example, how many reports a year leave your offices, which have your signature at the end, whether it is signed by you or a secretary or on your behalf? A. I would say I work about two hundred reports a year.

Q. Two hundred a year; is that your best recollection? A. Personally, yes.

The Bureau as a whole,—

Q. I asked you about how many reports that bear your signature? A. As the investigator?

Q. How many reports that bear your signature on the American Standards Testing Laboratory stationery; how many (63) reports go out a year with your signature at the bottom, whether signed by you or somebody else on your behalf? A. Well, let me answer this clearly for your information. Excuse me, sir.

Mr. Kaplan: He keeps interrupting the witness.

The Court: That's very simple. All he has to do is answer yes or no.

Mr. Kaplan: His responses are for you to determine, not for him to determine.

Q. How many did you send out, one hundred, two hundred, three hundred, six hundred?

The Witness: Work on, two hundred reports.

I'm the Technical Director of the Bureau, and it's the requirement of the Bureau that all reports—

The Court: He wants to know if you sent out two hundred reports.

The Witness: Yes.

The Court: Okay. That's what he sent out.

*Vasilis Morfopoulos, for Plaintiff, Cross*

By Mr. Ausubel:

Q. For example, in the year 1972, how many reports went out with your signature at the bottom, on the report? A. Here we go again.

Q. Can you give me a number, as his Honor indicated, (64) is it three hundred, four hundred, five hundred, a thousand? A. I can't answer your question.

The Court: Okay. He can't answer your question. Okay, next question.

Q. Dr. Morfopoulos, would it be fair to say that your name, your signature, whether it's by stamp or ink, is it fair to say that your name appeared on 18,000 reports? A. Just—

The Court: Would that be right, what he said?

The Witness: Yes.

The Court: It's not going to change a case how many times your name appeared. Would you just listen to the questions and answer them.

The Witness: But—

The Court: I don't want to be here for a month on you bantering and sparring with the lawyer. I'll know whether you shouldn't answer the question or not.

The Witness: All right.

Q. Now, with respect to the reports that you submit on behalf of the American Standard Testing Bureau, do you hold yourself out as an expert on horses that were getting hives? A. Definitely not, sir.

Q. Do you sign reports in connection with that (65) subject matter? A. No, sir. As I said, your Honor, I cannot answer his questions unless I state why my name appears on the report.

The Court: I know why your name appears, because you are the head of the company.

The Witness: I'm the Technical Director.

*Vasilis Morfopoulos, for Plaintiff, Cross*

The Court: Of course. I know. What does that have to do with the case. Do you disagree with his qualifications?

Mr. Ausubel: Your Honor, I do.

The Court: Then, attack his qualifications. Not by what he signed, by his ability or inability. Not by what he signed. Whether he signed five million reports is not going to change this Court's opinion of whether he is qualified as a metallurgist or engineer or not.

Mr. Ausubel: I'll make an offer of proof, if your Honor wishes. I intend to offer proof, with respect to the number of instances he has signed reports on matters which are unrelated to metallurgy. I'm not interested in pursuing this line, if your Honor is going to be antagonized with me.

The Court: He talks about automobiles and food products, and who knows about everything. His (66) man is Nader, and all he is is a lawyer. I'm interested in whether or not you agree with what he says in this case about these pieces of material.

If you don't agree, ask him the questions.

Mr. Graffi: I would like to join in the objection made by my co-attorney here, and I believe that this is absolutely relevant to whether or not the credibility of this man here—

The Court: Whether he signed the report that horses have hives?

Mr. Graffi: Whether he would sign a report and 18,000 other things.

The Court: That would show whether he knew anything about this tire rod end?

Mr. Graffi: It would have an important aspect on the weight to be given the value of his report; that this man signs reports and anything and everything, 18,000 of them.

*Vasilis Morfopoulos, for Plaintiff, Cross*

The Court: Would it have any weight on his oral testimony here today, whether or not he knows what he's talking about?

Mr. Graffi: Yes, your Honor.

The Court: A report about a horse would affect his testimony orally here today in court?

(67) Mr. Graffi: A man signs a report on 18,000 different subjects; that affects the weight and credibility of the report.

The Court: Counsel, if you want to ask the questions, ask them.

Did you sign 18,000 reports? You signed them?

The Witness: I didn't sign any of them.

By Mr. Ausubel:

Q. Did you sign a report, for example, about—as an expert, about a portable phonograph that short-circuited and killed a woman? A. Absolutely not.

Q. Never did that? A. No, sir.

Q. Do you recall, in March of this year, that you appeared as a witness in the Supreme Court, Queens County, as an expert witness?

Mr. Kaplan: Your Honor, he's going into collateral matter. He asked him a question and the man answered it.

Now, we're going to have an issue of what he testified to in the Supreme Court in Queens County. Now, he's bringing in the stenographer from Queens, and (68) the Queens Court Justice.

The Court: He can't do that. I will not permit you. You know you can't examine from that record. It hasn't been authenticated. We don't even know if it's a true transcript.

Don't start those semantics with me. Now, you know that's right.



*Vasilis Morfopoulos, for Plaintiff, Cross*

Counsel, you know that's right; you know you wouldn't let your client answer the question either, if you were on the other side, because it's not right. Now, are you going to bring in the stenographer?

Mr. Ausubel: No, I'm not.

The Court: Then, you can't do it.

Mr. Ausubel: I first have a right to ask the question. That's my position. I have the transcript here from the court. If your Honor is going to preclude me, I have an extended line of inquiry in this area.

The Court: Whether that transcript is authentic, and whether the questions and answers are authentic, and whether or not such statements were made, you can't do it. You have to have it identified.

(69) Mr. Ausubel: I believe I have a right, preliminarily, to ask the witness. Your Honor has ruled, and I'm going to be bound by the rule.

The Court: Yes.

Mr. Ausubel: I myself, I proposed to go into this to some considerable extent about these other areas that the witness allegedly held himself out as an expert.

The Court: I wouldn't doubt it. You can place it on the record, the number of times he held himself as an expert. I don't preclude you from doing that. Just ask him. Then I will determine the weight of the testimony.

Each and every one of those items, you may ask him.

By Mr. Ausubel:

Q. Did you ever hold yourself out as an expert and sign a report on exploding champagne bottles? A. No, sir.

*Vasilis Morfopoulos, for Plaintiff, Cross*

Q. Do you recall being asked certain questions—

The Court: You may do it this way. Did you ever testify in a court proceeding?

Q. Did you ever testify in a court proceeding, on March 19, 1973?

(70) Mr. Kaplan: No. No. I'm going to object to this, your Honor.

The Court: Ask him whether or not he ever testified and what was the Court?

Q. Did you ever testify in Supreme Court, Queens County, March 19, 1973, that you had signed a report concerning exploding champagne bottles?

Mr. Kaplan: I'm going to object to this line of questioning.

The Court: Did you ever testify?

The Witness: No, sir. My name is on all reports.

The Court: Did you testify in that case?

The Witness: On a champagne bottle matter, the answer is no. Definitely not.

Mr. Ausubel: I had intended to read from that transcript, but your Honor refuses to permit me.

The Court: He says he never testified there.

Mr. Ausubel: I understand.

The Court: Then, you can't do it. He said he never testified in that case.

Mr. Ausubel: Your Honor, if that's the basis of the objection—

The Court: That's what he said.

(71) Mr. Ausubel: I'm sorry. I didn't mean to interrupt you. Then I'm going to ask for leave to subpoena the Court Reporter. If this is the basis for the objection, if there is not going to be a stipulation—

*Vasilis Morfopoulos, for Plaintiff, Cross*

The Court: The basis is he says he never testified in that trial.

Mr. Kaplan: This is a totally impermissible collateral attack. Now we're going to have a trial within a trial as to what happened in Queens County Court with a champagne bottle.

I would respectfully submit, your Honor, if Mr. Ausubel has some argument or vendetta with this witness, he ought to settle it somewhere else.

Mr. Ausubel: I don't consider this a comic opera, and I take umbrage at this kind of objection, and I'm going to move for a mistrial. I think I'm being hampered in this kind of thing.

All I asked for is permission, in view of the technical objection. I'm going to read from what I consider transcripts, to be permitted to call the Court Reporter, if there is not going to be a concession if this is what the transcripts read.

The Court: The man said he never testified in (72) that trial.

Mr. Ausubel: That's why I want to get the Court Reporter to indicate he did indeed testify.

The Court: What is the name of the case?

By Mr. Ausubel:

Q. Did you testify in a case called Pajula (phonetic) against Romano? A. Yes. This is an automotive case. It has nothing to do with champagne bottles.

Q. You were asked questions concerning your 18,000 reports you signed each year, and what the contents of those reports are?

Mr. Kaplan: Objection, your Honor. I will concede he signed all these reports. Make a general statement, place them on the record. All reports as to any type matter, you say he signed and I don't care what his answer is.

*Vasilis Morfopoulos, for Plaintiff, Cross*

The Court: You don't have to do it that way.

Q. Doctor Morfopoulos, as a matter of fact, you have never received a certification from Columbia University, never certifying you as an instructor or teacher at that university; isn't that a fact?

Mr. Kaplan: I'm going to object to this. He never said anybody certified him.

(73) The Court: He never said anybody certified him to be an instructor.

Q. Did you ever secure an appointment from Columbia University as a teacher?

Mr. Kaplan: I'm going to object to this. He never said anybody appointed him at Columbia University. He said he taught there.

The Court: That's what he said. He said he taught there.

Q. I'm asking you: Did you ever receive an appointment to teach at Columbia University? A. In fact, that trial, my appointment papers were introduced in evidence.

Mr. Ausubel: I move to strike out the latter part as non-responsive.

The Court: He said yes.

Q. Do you remember being asked this question: —

Mr. Kaplan: I'm going to object to this, if your Honor please.

The Court: He didn't ask the question yet.

Wouldn't the better evidence have been, if you had the documents you're talking about? He said he didn't sign something about horses. You show him the document, and ask him is this his (74) signature, rather than, what somebody else said in another trial, which is a collateral issue completely, which can never be attacked in another court.



*Vasilis Morfopoulos, for Plaintiff, Cross*

This is not an inconsistent statement. It's not something inconsistent with his statement today. This is not the case.

This is a question of attacking the man's credibility as far as this accident is concerned. The way to do it is, if he did do something involving that, you show it to him.

Mr. Graffi: It seems to me that was what the subpoena was for, and your Honor has quashed it.

The Court: You read that subpoena and you'll see whether it's for that or not.

Go ahead and read it.

Mr. Graffi: I didn't.

The Court: Take a look at it.

Mr. Graffi: It was to produce records.

The Court: Take a look at it. Don't say that.

By Mr. Ausubel:

Q. Were you asked this question in that trial on March 20, 1973, and did you give this answer under oath:

"Question: As a matter of fact, you never had an (75) appointment as an instructor by Columbia University, true?

"Answer: That is correct."

Mr. Kaplan: I'm going to object to this, your Honor.

The Court: Sustained.

Mr. Kaplan: I'm going to object to him reading from the transcript altogether, or whatever it is he's reading from.

Q. Dr. Morfopoulos, have you ever worked for an automotive manufacturer in your life? A. As a consultant, but not as a member of their regular staff.

*Vasilis Morfopoulos, for Plaintiff, Cross*

Q. You never worked in either Chrysler, Ford or GM, in assembly or disassembly of parts? A. No, sir, I have not.

Q. Now, when you eventually—

The Court: Let's take a five minute recess here.

(Recess taken)

---

By Mr. Ausubel:

Q. Now, doctor, when you say—and I take it you are referring now to your typewritten reports to refresh your memory, since these are the only documents that you have, together (76) with the photographs? A. That's correct, sir.

Q. When you went to the lot in New Jersey, you found the car that had extensive damage to the right front section of the car, including the wheel; is that correct? A. That is correct, sir.

Q. And it was obviously the subject of a violent impact or impacts; is that correct? A. Yes, sir.

Q. And you took pictures of the car as you found it in the lot? A. I did.

Q. Do you have those pictures there portraying the car and its damaged condition? A. Yes, I do.

Mr. Ausubel: May we have those photographs marked, please?

The Witness: Some of these photographs are already in evidence. I'll give you the ones that are not. Those are the ones.

Mr. Ausubel: I offer these photographs in evidence.

Mr. Kaplan: No objection.

*Vasilis Morfopoulos, for Plaintiff, Cross*

The Clerk: Five photographs placed in to (77) evidence as Plaintiff's Exhibits 12, 13, 14, 15 and 16.

(So marked.)

The Court: Those are Defendant's Exhibits?

Mr. Kaplan: Defendant is offering them.

The Clerk: All right. They are admitted as Defendant's Exhibits L, M, N, O, P and Q.

(So marked.)

The Court: All right.

Mr. Ausubel: I can continue in the meantime?

The Court: Sure.

Q. When you examined the car, visually, at the lot, you saw evidence that the—

That there was a flat tire, the right front tire? A. That is correct.

Q. You saw from the impact evidence, a broken tire rod, is that correct? A. I saw it.

Q. Excuse me. Could you answer my question yes or no?

Did you see evidence of a broken tire rod near the flat tire? A. Yes, correct.

Q. Would an automobile collision be a competent and producing cause of all of that damage that you observed; just (78) yes or no, please? A. Yes.

Q. And you also saw evidence, eventually, of the tire rod being bent that you described it to his Honor; is that correct? A. That is correct.

(79) Q. And this bending was obviously the subject of a violent trauma; isn't that a fact, sir? A. It was, yes.

Q. All right. For example, did you make any tests to determine what force in terms of pounds would be required to get a tire rod in this bent condition; just yes or no? A. In this instance, I did not.

*Vasilis Morfopoulos, for Plaintiff, Cross*

Q. Now, you heard these two people who came down from Chrysler who work at the Chrysler Laboratories in the Steering and Suspension Laboratories, yesterday, did you not? A. Yes, I did.

Q. And did you hear them testify that it would take at least or thereabouts, 4,000 pounds of pressure to cause a tire rod to be bent in that condition? A. I did, but they did not.

Q. Did you hear that? A. Sir, the testimony yesterday as I saw it was that bending inward or inboard in the actual direction of the tire rod in this manner would require this much.

Q. I— A. Now, I have pointed—

The Court: Did you hear their testimony?

The Witness: As it was given, yes.

(80) Q. Did you agree with the testimony of this gentlemen, Mr. Hasson (phonetic) who has been in the automotive field and Steering Suspension Laboratory of Chrysler?

Mr. Kaplan: With respect to what?

Q. With respect to the weight pressure that would be required to produce that kind of bending? A. Not this kind of bending, because as I pointed out to you, what he was describing yesterday is exactly the opposite of what has happened here.

Q. Do you agree with it or don't you agree with it? A. In total, no. I disagree.

Q. You didn't perform any tests, did you? A. On this occasion I have not, on others, I have.

Q. On this particular occasion when you got up your report, did you ever put in your report which you relied upon exclusively for your recollection of this examination, in your laboratory, that the hardness that you found was 88 to 94 on the RB scale? A. Yes.



*Vasilis Morfopoulos, for Plaintiff, Cross*

Mr. Kaplan: I'm going to object to the form of the question. He keeps inserting facts which may not be in the report: "refreshes his recollection?" He never used that phrase.

The Court: He means when he transcribed (81) them when it was transcribed for his purposes. What did you say, what was the answer?

The Witness: I did.

Q. You found that numerical evaluation upon a test in any of your reports that you submitted in connection with your examinations in this case? A. Yes, sir, I did. I said—

Q. Just show me where you did it, sir? A. The first page, last paragraph of the report of March the 13th.

Q. Well, as a matter of fact, in that paragraph you wrote that the hardness of this material was found to be 91 plus three RB Units? A. Plus or minus, if you recall it.

Q. Plus or minus three? A. Right. That means 88 to 94.

Q. This is what you put down then? A. You have it in front of you.

Q. Yes. Now, did you ever check with Chrysler, apart from looking at the diagram, Exhibit 4, did you ever check with Chrysler whether that met the manufacturer's specifications for hardness; just yes or no? A. No, sir. At that time I did not have the specifications.

Q. Before you wrote your report? (82) A. No, I did not.

Q. Did you ever write to Chrysler or communicate with Chrysler to see whether or not this particular hardness complied with their specifications? A. No, sir, I did not.

Q. Did you hear, yesterday, this Metallurgical Engineer, Mr. Cashell testify upon testing of this particular rod

*Vasilis Morfopoulos, for Plaintiff, Cross*

that they found it did comply with the metallurgical specifications for hardness?

Mr. Kaplan: Judge, may I observe that it's never appropriate procedure to ask one witness to give his opinion of the truth of another witness' testimony.

Mr. Ausubel: I'll withdraw it.

The Court: It's for the Court to weigh what one witness says as opposed to the other witness.

Mr. Kaplan: I'll concede he heard all the testimony of both Chrysler employees.

Q. Now, sir, with respect to your examination in the field, when you got there, did you first look at the mileage that was on the car at the time when you made the examination at the lot? A. Yes, sir, I did and I recorded it as 4,651.6 miles.

Q. All right. (83) A. And I also photographed the mileage, by the way.

Q. You don't know what happened to that car in the 200 miles between the time of the accident and the time when this car ended up in the lot, approximately 200 miles away?

Mr. Kaplan: I'm going to object to the form of that question. There's some indication on an exhibit that somebody wrote down a mileage. There was no testimony that—

The Court: He doesn't know anyway, in any event.

Q. In addition to that, you found evidence of such a violent collision that the key was jammed into the starter lock; isn't that correct? A. The key was jammed.

Q. Into the starter lock of the steering wheel? A. Yes.

*Vasilis Morfopoulos, for Plaintiff, Cross*

Q. And you also found evidence of impact and trauma in that the right ball stud was found to be severed; is that correct? A. I testified it had been pried off.

Q. When you're talking about prying-out, you're referring to an impact force which causes a prying-out; just yes or no? A. Yes, sir.

(84) Q. Wouldn't you expect with a trauma which would cause an impact force which would cause a prying-out as well as a deformity of a tire rod, that there would be some cracks within the tire rod assembly? A. Yes, sir. In fact, they are.

Q. Insofar as this particular undercarriage was concerned, when you examined it, you found evidence that there had been a grease and a lubrication there; is that correct? A. Yes, sir, there was some grease in that severed ball joint.

Q. And you had to clean the lubrication of this grease off? A. It was wiped off to the extent that it was present, yes.

Q. Now, when you wrote your report of March 13th, 1972, did you ever once use the expression gaulling marks that you observed gaulling marks? A. Well—

Q. Did you, yes or no, please? A. No, I—

Q. I just asked you yes or no. A. No, I did not use that expression.

Q. The first time you used that expression in connection with your examination of this vehicle is when you took the stand today; is that correct? (85) A. When I described one of my exhibits.

Q. Isn't that the first time you used it? A. Yes.

Q. You heard yesterday, conceding you heard all the testimony, from these two men, from Chrysler, that they found no preexisting gaulling on the vehicle?

Mr. Kaplan: Objection, your Honor. The gentlemen said they found no gaulling marks.

The Court: Overruled.

*Vasilis Morfopoulos, for Plaintiff, Cross*

Q. This part that you are holding in your hand, this deformity here, what do you call this? A. This is a mechanical deformation, the cracking, the cracked area of the upper bearing.

Q. Isn't this crushed area of the upper bearing consistent with an impact? A. With the pry-out.

Q. That would be an impact, sir, wouldn't it? A. Yes, sir. That's correct.

Q. When you went to the lot and examined this vehicle, the first thing you did was you tried to turn the steering wheel; isn't that a fact? A. That is correct.

Q. When you tried to turn the steering wheel, did the steering wheel turn freely? (86) A. Yes, it did.

Q. When the steering wheel turned freely, did the left wheel respond? A. Yes, it did.

Q. It responded the way it should have responded? A. Yes, it did.

Q. It was the right wheel which was damaged that didn't respond; isn't that a fact, sir?

Can't you answer my question yes or no? A. That's a fact.

Q. All right. Now, assuming a driver is driving along a straight stretch of roadway and assuming the right wheel is not responding, the left wheel is responding to violent turns to the left, wouldn't the left wheel respond in that direction; just yes or no? A. It would.

Q. Now, sir, you tell us that you made an examination and you found evidence of what was that term you used, seizing? A. Yes.

Q. Where is that part? A. This is the socket and the smeared metal inside the socket all around its contact point.

Q. Now, do you get smear from a pry-out; just yes or no? (87) A. No.

Q. Never get smear from a pry-out? A. You got—

Q. Do you ever get—



*Vasilis Morfopoulos, for Plaintiff, Cross*

The Court: He can answer that. He's an expert.

Q. Do you ever get smear from a pry-out, ever? A. You do not get smear. You get an upsetting of the metal as you do have from those two points. This is smear from a rocking and rotary type of motion between the ball joint bearing here and the socket top.

Q. Now, what part of this part here do you say you observed smear and which you concluded that there was a seizure? A. All around the top of the socket on both sides.

Q. Would that be called the lip? A. Yes.

Q. Now, isn't it characteristic, if you ever had a seizure that the normal seizure is at the throat and not at the lip; just yes or no? A. Again—

Q. Could you answer that yes or no? A. What you are calling—

Mr. Ausubel: Your Honor, I believe the witness—

(88) The Court: He's asking what you are calling the throat and lip?

Q. Is there a technical expression called the throat rather than the lip of that part? A. I would correct what I said and I meant the throat. It is the inside of the lip of the socket on top.

Q. Didn't you testify it was the lip and not the throat?

Mr. Kaplan: What he testified to, your Honor, heard. This is argumentative.

The Court: Go ahead.

Q. Assuming your hypothetical that the driver is driving along at 30 miles an hour and proceeding in a straight westerly direction and assuming he had a seizure of the kind that you have indicated and continued to turn his steering wheel to the left, would his car take a 45

*Vasilis Morfopoulos, for Plaintiff, Cross*

degree course off to the right; just yes or no? A. If you were successful—

Q. Could you answer that?

Mr. Kaplan: How can he answer that?

The Court: If he can't answer yes or no, he said so.

The Witness: I can't answer it yes or no.

The Court: He can't answer it. That's all.

(89) Q. Well, a man is going in a straight direction and then his car, you say, the steering does not function at all on the right side, but the steering does function on the left side. Wouldn't you expect the car, if he turned the steering wheel to the left, to proceed toward the left rather than towards the right? A. If all the linkages were connected or if they are disconnected or if they are seized or not seized.

Q. Assuming the kind of seizure you assumed occurred in this case to this vehicle and a man is proceeding in a straight westerly direction and then turns his steering wheel to the left which you say functions? A. No, sir. I said it functioned after the linkage was severed. Whether he was going to the right, there was nothing to do about that.

Q. Are you saying now that the seizure on the right affected the steering on the left?

Mr. Kaplan: Objection.

The Court: That's what he's saying.

Q. Is that what you are saying? A. When I tested it the linkage was already severed. It was disconnected. So the left was free to do whatever it was commanded to do by the steering. During the process of seizure, there was a completely connected system.

(90) Q. When it was a completely connected system and when you turned the steering wheel to the left,

*Vasilis Morfopoulos, for Plaintiff, Cross*

wouldn't you expect the car to go to the left even with that condition, in motion? A. Absolutely not.

Q. You would expect this to go on a 45 degree angle; is that what you expected? A. Yes, sir.

Q. Now, if he applied his brakes, down hard, would you expect the brakes to leave tire marks on the right? A. Depends how soon—from the testimony I heard—

Q. Assuming he applied the brakes at about the time that he impacted the car and before he continued on in a westerly direction for at least 25 to 40 feet, wouldn't that leave some rubber on the road; just yes or no? A. He never had a chance to move away.

The Court: Just answer it yes or no?

The Witness: Definitely not.

Q. It wouldn't leave a skid mark? A. There wouldn't be enough time to apply the brakes.

The Court: Definitely not, he says.

Mr. Ausubel: I have no other questions.

The Court: Any questions?

Mr. Graffi: May I have one minute? I (91) just want to ask a question of this gentleman.  
(Pause.)

*Cross Examination by Mr. Graffi:*

Q. Doctor, I want to see if I could get one thing clear: Did this seizure occur between the bearing and the socket? A. Yes.

Q. Now, one other thing I wanted to ask you: Doctor you commented something about the hardness of this material being between 88 and 91? A. 94.

Q. 94. How did you determine that? A. A Rockwell hardness determination.

Q. And did you have to use a certain special instrument or things to do that? A. Rockwell hardness tester.

*Vasilis Morfopoulos, for Plaintiff, Re-direct*

Q. Do you need certain background and knowledge to be able to conduct that kind of a test? A. I hope so.

Q. Yes. And can you determine that hardness without those tests and without that knowledge? A. No, sir.

Q. So that if I were a seller of this car, a dealer, (92) selling it to the general public and I just looked at this car and I didn't have your background and Rockwell instruments, could I tell the hardness of that material? A. No, sir.

Mr. Graffi: Thank you.

*Re-direct Examination by Mr. Kaplan:*

Q. Are you familiar with the mechanics or physics of how long it takes to brake a car at speeds? A. Yes.

Q. At 30 miles an hour, is there a lagging time that it takes for a man to take his foot from the gas pedal and put it on the brake? A. The lapsing time is three quarters of a second at that speed. The vehicle would have travelled a certain distance.

Q. At 30 miles an hour and three quarters of a second, how far would that vehicle have gone? A. That vehicle will have travelled 32 feet before the driver would have an opportunity to apply and lock his brakes.

Q. Some people are quicker and some people are slower, I take it? A. The average driver would need a minimum of 32 feet to perform that function.

Q. Now, Doctor, I take it you're familiar with (93) Mr. Ausubel's firm, Berman & Frost? A. Yes, I am.

Q. Have you ever testified as an expert witness at their behest? A. Yes, I have.

Q. With respect to Chrysler Corporation—

Mr. Kaplan: This is what you've been asking for, Mr. Ausubel?



*Vasilis Morfopoulos, for Plaintiff, Re-cross*

The Court: I don't want to get into that. Every expert—that's why they are experts. You know I never get excited about that.

Mr. Ausubel: I just have one question.

*Re-cross Examination by Mr. Ausubel:*

Q. When you talk about reaction time, you're talking about the interval of time after somebody perceives a situation and before he puts his foot on the brake? A. That is correct.

Q. Once a man puts his foot on the brake and puts it down hard, you would expect to have a tire mark and a skid mark on the roadway, on the drive surface? A. As soon as the wheel locks you would have skid marks.

Mr. Kaplan: That's the claimant's case, your Honor.

(94) The Court: Defendant want to read that deposition?

Mr. Ausubel: I want to. Before I do that, you want to take all the proof before you hear motions?

The Court: I'll hear the motions too.

Mr. Ausubel: I can read the deposition?

The Court: Read the deposition and then you will rest and I will hear the motions.

Mr. Ausubel: I want to just put my people on for—

The Court: Rebuttal? Maybe you'll stipulate as to what the rebuttal would be. Mr. Kaplan, maybe you can stipulate as to what the rebuttal testimony would be.

Mr. Kaplan: He hasn't asked me, sir.

Mr. Ausubel: My people will testify that it is impossible to have, based upon both of them,

*Vasilis Morfopoulos, for Plaintiff, Re-cross*

based upon both of them, a seizure between the bearing and the socket or any seizure as described by Dr. Morfopoulos based on all their experience and training in the field.

The Court: They told us that yesterday.

Mr. Kaplan: I would stipulate they would—  
(95) I would concede that after having listened to Dr. Morfopoulos, their opinions have not changed.

Mr. Ausubel: And in addition that this could not have happened, they would testify.

The Court: Without conceding the truth.

Mr. Ausubel: They would testify if a seizure occurred as claimed by Dr. Morfopoulos and the left wheel, the steering wheel was turned to the left on this vehicle, it would not and could not have pursued the course as described by the plaintiff.

Mr. Kaplan: They testified at length about that yesterday.

The Court: I know the testimony. I'm just taking the stipulations.

All right.

Mr. Kaplan: Do you want to offer that deposition, the Judge can read it for himself as well as anybody else can. Maybe your Honor would prefer to have it submitted in evidence?

Mr. Ausubel: I could do it either way. I could read it. It will only take a few minutes.

The Court: I would just as soon have the whole thing.

(96) Mr. Ausubel: There are some questions here that are not admissible.

Mr. Kaplan: Your Honor can rule on that.

The Court: How many pages do you have?

*David Charles Eberd, E.B.T.*

Mr. Ausubel: This is a deposition of the defendant Woodbridge Dodge, Incorporated by DAVID CHARLES EBERD, which was held on April 26, 1973 beginning at Page 4, direct examination by Mr. Ausubel:

"Question: What is your full name?

"Answer: David Charles Eberd.

"Question: Where do you reside?

"Answer: 1756 Court Ocean, New Jersey.

"Question: Mr. Eberd, what is your occupation?

"Answer: Service Manager.

"Question: For?

"Answer: Woodbridge Dodge.

"Question: How long have you been with them, sir?

"Answer: August of '71.

"Question: August of '71?

"Answer: Yes.

"Question: Did you produce with you a copy of records with respect to a certain automobile which was purchased by Mr. Langford, who just testified?

(97) "Answer: Yes.

"Question: From the time you went to work until December of 1971, what was your title?

"Answer: Service Writer.

"Question: Service?

"Answer: Right.

"Question: Which means what?

"Answer: I would greet the customers and write down their complaints and what service they needed.

"Question: Was there a regular practice when a car, a new car, 1971 was brought in for inspection and servicing?

"Answer: Just a maintenance service on it.

"Question: I understand. For 1971—for the 1971, car that Mr. Langford bought, when was the first time a service, regular service was recommended and to be had?

*David Charles Eberd, E.B.T.*

"Answer: Three months, 4,000 miles.

"Question: 4,000 miles or 3,000 miles?

"Answer: Three months or 4,000 miles, whichever came first.

"Question: Under this book, it was suggested that he bring this vehicle in three months after (98) initial purchase; is that correct?

"Answer: Right.

"Question: First, when did he first purchase a car, have you got the record with respect to that?

"Answer: Yes. July 19, 1971.

"Question: Do you have the records of this vehicle with you, all your records?

"Answer: Yes."

Mr. Ausubel: Now, amongst these documents is the exhibit which is now in evidence, the pre-delivery service ticket.

The Court: The service ticket?

Mr. Ausubel: Yes, which is now Defendant's Exhibit G in evidence.

(99) "Question: According to Defendant's Exhibit A—"

Mr. Ausubel: Referring to the Exhibit in the deposition.

"Question: —for identification, this vehicle was a Dodge Datsun; is that correct?

"Answer: Correct.

"Question: When this vehicle was originally delivered to your firm, it was by paper invoice dated June 18, 1971, and a shipping note is dated June 25, 1971; is that correct, sir?

"Answer: Yes."

"Question: Did this vehicle come equipped with power steering?

"Answer: Yes, it did.



*David Charles Eberd, F.B.T.*

"Question: So that it came equipped with steering, with a power system. It had a regular steering with a power system; is that correct?

"Answer: Yes.

"Question: Then the vehicle was sold by Tony Gomez, the salesman, is that correct?

"Answer: Yes.

"Question: On July 9, 1971; is that right?

"Answer: Right.

(100) "Question: In connection with that sale, was it with a regular practice with Woodbridge before the vehicle was sold to completely inspect and test the vehicle?

"Answer: Yes.

"Question: Is there a charge on that or a notation about that in the invoice which is the fourth or pink sheet prep?

"Answer: Yes, right at the top, \$68.

"Question: What isn't held in the pre-delivery inspection that was made and customarily made by Woodbridge at the time of this?

"Answer: Your fluid levels—"

Mr. Graffi: Where are you reading?

Mr. Ausubel: Page eight, line five.

Next question that was answered.

Mr. Graffi: Did you read question 22?

Mr. Kaplan: He doesn't have to read everything.

Mr. Ausubel: I didn't read it because you objected to it.

Mr. Graffi: I wanted to know if you stipulated to that one.

By Mr. Ausubel:

(101) "Question: What is entailed in the pre-delivery inspection that was made and customarily made by Woodbridge Dodge at the time of the sale?

*David Charles Eberd, E.B.T.*

"Answer: Your fluid levels, your New Jersey State inspections and operations of windows, doors.

"Question: Steering?

"Answer: A road test, where you set the brakes and steering that you have.

"Question: Do you inspect and test this vehicle in terms of its undercarriage to see to it it is in good condition?

"Answer: Yes."

Mr. Ausubel: Next question that was answered is page 9 line 10.

"Question: Did your firm in connection with the pre-delivery inspection, customarily make an inspection for all mechanical aspects of the vehicle?

"Answer: What do you mean 'mechanical'?

"Question: Specifically, was there any specification made with respect to the vehicle in terms of its undercarriage?

"Answer: Tail pipe alignment. Of course, when you go up in the air, you check the rear end, (102) check suspension, as far as wheel rock and go across a front end machine. This is a New Jersey State inspection.

"Question: What else is involved in a New Jersey State Inspection?

"Answer: Your windshield wiper, your window operations, your mirrors, your shift indicator to the right place of the horn.

"Question: What about the steering mechanism, how is that inspected?

"Answer: They have a list. They lift it up and they check it for looseness, out of alignment and what have you.

"Question: What about the brakes?

"Answer: They run it over a machine with levels, test the height of the brakes.

"Question: What about the transmission?

*David Charles Eberd, E.B.T.*

"Answer: Transmission, we check the fluid and drive—have it on a road test.

"Question: Did this test also entail electronic forms of testing?

"Answer: To set up an engine."

Mr. Ausubel: Next question.

"Question: What was the condition of the (103) vehicle as found by Woodbridge at the time of this inspection?

"Answer: It passed the New Jersey State inspection.

"Question: Was there anything mechanical or otherwise wrong with the vehicle at the time of the original delivery to Mr. Langford?

"Answer: No.

"Question: Was there a form which your firm was required to complete in connection with the initial inspection before delivery?

"Answer: Yes.

"Question: What kind of a form was that?

"Answer: It's printed out by Chrysler to check it, items on the car.

"Question: Is this white form entitled 'Chrysler Motors Corporation, extra care and new vehicle preparation and inspection road test and safety check,' form, the kind of form that was required to be completed?

"Answer: Yes.

"Question: The one you produced here?

"Answer: A revised—it's a New Jersey one.

"Question: It's a model?

(104) "Answer: Yes, that's right."

Mr. Ausubel: That again refers to the same exhibit.

"Question: Was there any form completed in connection with this vehicle, that is to say, was this preparation followed when the vehicle was—

"Answer: Yes, it was.

*David Charles Eberd, E.B.T.*

"Question: Well, it was done in this case?

"Answer: Yes.

"Question: You followed this form to the letter; is that correct?

"Answer: Right.

"Question: Then it was given to Mr. Langford; is that right?

"Answer: Yes.

"Question: When was the first indication that Mr. Langford brought back this vehicle after the purchase on July 9, 1971?

"Answer: December 2.

"Question: On July 9, 1971, you have a sheet headed 'Internal Repair Order No. 53044,' is that correct, sir?

"Answer: Yes.

(105) "Question: What was done on that occasion, according to this record?

"Answer: The time the mechanic spent preparing the car and charged back through the dealership is the way he keeps his records.

"Question: These charges were involved for the inspection which is called for under this white form, Chrysler Motors Corporation Extra Care and New Vehicle Preparation; is that correct?

"Answer: Correct.

"Question: Who did the work at that time?

"Answer: I don't know.

"Question: Is there any indication on this form as to who was the—

"Answer: On the back, there is a mechanic number 31.

"Question: Who would that be?

"Answer: I don't know.

"Question: Would you insert in the transcript who that man is by name and address?

"Answer: I will find out."



*David Charles Eberd, E.B.T.*

Mr. Ausubel: All right. Then there was a blank space, but it was not completed.

(106) "Question: Then, after the car was taken out by Mr. Langford, you say the next occasion that he brought it in was on December 2, 1971; is that correct?"

"Answer: Right.

"Question: That was for the first checkup?"

"Answer: Checkup.

"Question: What is entailed in the first checkup, this three month or four thousand mile checkup, whichever occurred first?"

"Answer: Your oil change with a filter. We have a maintenance service where we hook a scope up to the engine and present the carburetor point.

"Question: Is it put on a list?"

"Answer: Yes, to change the oil and filter.

"Question: You can see the undercarriage of the car as you are on the lift on that occasion?"

"Answer: Yes.

"Question: At the time that he brought this car in for the first check on December 2, 1971, what complaints, if any, did he have?"

"Answer: He had a glove box, something wrong with the glove box. The next sheet down tells (107) us at the bottom and something with a choke."

The Court: We've had all that testimony.

Mr. Ausubel: Yes.

The Court: I don't think we need that.

There's no question it was in for inspection.

That's the only important thing.

Mr. Ausubel: Yes, after he made these.

Question at the bottom.

"Question: After he made these complaints, was work done there, was an inspection had, this first inspection?"

*David Charles Eberd, E.B.T.*

"Answer: A checkup was done, and also we put a plug into the carburetor to correct the choke and repair the glove box.

"Question: When the undercarriage was inspected on this occasion, what was found at that time, anything wrong with the car in any way, steering, the brakes, transmission, motor?

"Answer: Nothing that the customer said to us.

"Question: Nothing that you could find?

"Answer: Nothing.

"Question: Nothing that you could find?

"Answer: Nothing.

(108) "Question: Did he ever make any complaints about the steering or the brakes or the transmission of the car?

"Answer: No, no.

"Question: Do you know how much time was spent in connection with this inspection?

"Answer: Yes.

"Question: On December 2?

"Answer: Yes. It's on the back of the ticket.

"Question: What does this say, sir?

"Answer: 446 to 708."

Mr. Ausubel: I'm just trying to facilitate this thing. The name of the mechanic at that time was Joseph Zigre.

Now, at page 17, line 23.

"Question: Would you make any inspection of the steering mechanism, other than a road test, to see if the car steers all right?

"Answer: Yes."

Mr. Ausubel: Next question.

"Question: What did you do other than a road test?

"Answer: Put it across a front end machine.

"Question: What happens?

*David Charles Eberd, E.B.T.*

(109) "Answer: You align the wheels, if they are not aligned.

"Question: All right.

"Answer: You check for looseness or tightness in it, and you go around and check all the wheel lugs on the wheels.

"Question: The looseness or tightness that you talked about before, checking the wheel lugs for looseness or tightness, in what, the steering mechanism?

"Answer: The steering itself."

Mr. Ausubel: Now, next page, 19, line 2.

"Question: You said you put the car on a machine?

"Answer: Right.

"Question: And you see if it's loose?

"Answer: Yes. You raise it up in the air.

"Question: What is it specifically you are talking about, looking to see if it's loose?

"Answer: Wheel bearings, tire rods, steering box itself, what have you.

"Question: Are the tire rods attached to the wheels?

"Answer: No.

(110) "Question: Where are they attached?

"Answer: To the lower ball joint.

"Question: Are they attached by lugs?

"Answer: Through knuckles.

"Question: Through knuckles?

"Answer: Yes.

"Question: Are they supposed to be tight?

"Answer: Yes.

"Question: Where is the knuckle attached to?

"Answer: To the back part of the ball joint.

"Question: Could that be seen without disassembling any part of the car?

"Answer: Yes.

"Question: As part of the inspection, would you look at the ball joints?

*David Charles Eberd, E.B.T.*

"Answer: Yes.

"Question: What would you examine them for, if anything?

"Answer: There is a nut on the top, for looseness in that nut, and you know, malfunction in it, itself.

"Question: Let's start with the nut. Is it attached by one nut?

"Answer: There are three bolts that hold the (111) ball joint all told.

"Question: Those nuts are supposed to be tight?

"Answer: Yes.

"Question: Is that one of the things you inspect for before you deliver a car to the customer, as to whether or not the nuts holding the ball joint are tight?

"Answer: Yes.

"Question: What goes into the ball joint?

"Answer: Steering knuckle.

"Question: Can you see that without disassembling any part of the car?

"Answer: Yes."

Mr. Ausubel: Now, to facilitate this, page 20, line 23; that's the next question.

"Question: As far as the interior of the ball joint, can you see what is inside the ball joint, inside itself, for the interior composition of the ball joint without disassembling any part of the car?

"Answer: You could see the threads where the nut attaches on the top of it, yes, sir.

"Question: That's what you can see?

(112) "Answer: Yes."

Mr. Ausubel: Page 27, line 14.

"Question: Mr. Everett, before this vehicle was delivered, if I understand correctly, before it was delivered to Mr. Langford on July 9, 1971, this vehicle, according



*David Charles Eberd, E.B.T.*

to these records, was given the prescribed and regular examination and tests which falls under the heading of predelivery inspection tests, is that right?

"Answer: Yes, sir, it was.

"Question: This, among other things, entails putting the car on the lift and checking the tire rods and the ball joints and all other things that Mr. Kaplan asked you about; is that correct?

"Answer: Yes.

"Question: At that time, was there any finding whatsoever of anything wrong with any of these parts of the car?

"Answer: No."

Mr. Ausubel: And I think that concludes it.

The Court: Defendant rests?

Mr. Ausubel: Yes.

(113) The Court: Third party defendant rests?

Mr. Graffi: Yes.

Mr. Kaplan: The denial certificate?

Mr. Ausubel: I would have to object to that because it contains an opinion, which I cannot stipulate to without having had an opportunity of cross examination of that witness.

The Court: Will you stipulate that the—just as to his damage?

Mr. Ausubel: He refers to a capping of a single tooth.

The Court: All right.

Mr. Kaplan: Lower central tooth.

Mr. Ausubel: That's the tooth which he says was chipped.

The Court: The balance is in the hospital records.

Motions after the entire case, so we have it on the record?

Mr. Ausubel: Your Honor, do you want me to explain at length?

The Court: Not at length. You can put that in your brief at length.

*Motions*

Just so the record is straight.

(114) Mr. Ausubel: I'm moving to dismiss the complaint, and for a judgment in favor of the defendant, Chrysler Motors Corporation and following your Honor's instruction, I'll set forth at length in our brief, the reasons for it.

The Court: Please.

Mr. Ausubel: Failing that, as a matter of law, that the plaintiff has failed to establish his burden of proof as to the elements of his case required against the defendant Chrysler Motors Corporation, and again, I'll set that forth in the brief.

The Court: All right. Submit your brief. And as against the cross-claim?

Mr. Ausubel: Of course, in the event there is a verdict, that I am asking for a judgment over for least indemnity or contribution from the co-defendant and on my counterclaim against the driver, based upon driver negligence.

Mr. Graffi: May I just ask what basis you are basing the cross-over complaint against Woodbridge?

Mr. Ausubel: I'm basing it on a case called Dowell against Dow Chemical.

Mr. Graffi: On negligence or what?

(115) Mr. Ausubel: That's going to be set forth at length in the brief.

Mr. Kaplan: It's an apportionment, actually.

The Court: Submit your brief.

Mr. Kaplan: I'm going to respectfully ask your Honor to dismiss the cross-claim against the plaintiff, on the ground that there hasn't been any negligence on his part.

The Court: I'll reserve decision on all motions. Submit the briefs.

Mr. Ausubel: We will need the—

The Court: Just a minute.

Thank you, gentlemen.

(Case concluded.)

**Decision by Costantino, D. J.**

**UNITED STATES DISTRICT COURT,**

**EASTERN DISTRICT OF NEW YORK.**

**[SAME TITLE.]**

**Appearances:**

Marshall G. Kaplan, Esq., 50 Court Street, Brooklyn, New York, for plaintiff.

Markhoff, Gottlieb, Lazarus, D'Auria & Maldonado, P.C., 401 Broadway, New York City, by Julian N. Gottlieb, Esq., for defendant Woodbridge.

Emile Z. Berman and A. Harold Frost, Esq., 77 Water Street, New York City, by Marvin U. Ausebel, Esq., for defendant Chrysler Motors Corp.

**COSTANTINO, D. J.:**

Plaintiff, Francis J. Langford, on behalf of himself and his infant son Frank, seeks to recover damages resulting from defendants' breach of express and implied warranties emanating from the sale of a Dodge Dart automobile. Chrysler Motors Corporation [hereinafter referred to as Chrysler] manufactured, designed and engineered the automobile, and Woodbridge Dodge, Inc. [hereinafter referred to as Woodbridge] sold the vehicle to plaintiff. Chrysler cross-claimed against Woodbridge seeking either indemnification or contribution, and also counter-claimed against plaintiff, alleging that the accident was brought about by his improper use of the automobile. Finally, Woodbridge cross-claimed against Chrysler for indemnification.

The court has jurisdiction pursuant to 28 U.S.C. §1332 (1971).

All parties waived a jury trial, and the case was tried by the court on September 10, 1973. Decision was

*Decision by Costantino, D. J.*

reserved. The testimony adduced at trial can be summarized as follows. On July 9, 1971, plaintiff purchased a new Dodge Dart from Woodbridge. Prior to the sale Woodbridge performed all necessary dealer preparations. From July 9, 1971 to December 2, 1971 the car was driven some 4,400 miles without any difficulties. The car was then brought to Woodbridge for servicing, which included a standard inspection of the car's steering system.

On the evening of December 3, 1971 plaintiff drove his son to a scout meeting. On the return trip home plaintiff drove on the Staten Island Expressway, exited at Victory Boulevard and proceeded along a straight stretch of roadway. There was very little traffic, no precipitation and the roadway was well lighted. The plaintiff recalled that he heard a loud noise, that his car suddenly began to veer to the right, that he immediately applied the brakes and turned the steering wheel to the left, but that the car did not respond and continued untowardly to the side of the road. Plaintiff's vehicle hit a parked automobile and caromed into a retaining wall some fifteen feet away. Although the car was equipped with seatbelts they were not fastened.

The collision's impact hurtled plaintiff's son into the dashboard of the car. He sustained serious facial injuries and was hospitalized for two weeks. He received a laceration of the lower lip requiring six stitches and leaving a small permanent scar; the right side of his face was swollen for six months and a lower tooth was chipped. In addition, there was extensive property damage. The front right side of plaintiff's car, including the front right wheel and tie rod assembly, was smashed. The left side of the parked car was pushed in and a portion of the retaining wall was knocked down.

Plaintiff's expert witness, Dr. Vasilis Morfopoulos of the American Standard Testing Bureau, testified that by means of visual and microscopic examination of the tie



*Decision by Costantino, D. J.*

rod assembly he found three separate and independent events—a seizure of a ball joint located in the tie rod assembly, a pry-out of the ball joint's stud and bearing from its socket and a bending of the socket's stem. He further testified that while the bent stem and pry-out were the immediate result of the collision, the ball joint's seizure was caused by a pre-existing tightness which was manifested by abrasions on the bearing and gaulling damage and smeared metal on the inside of the socket. It was his opinion that pre-existing imperfections caused the ball joint stud to become fixed in "a peculiar angularity, directed outwards toward the right wheel" and that this was the primary cause of the impaired steering ability of the car.

Defendant Chrysler's expert witnesses testified that they found no evidence of a defective ball joint or of a seizure. They testified that all the damage sustained by the tie rod assembly was the result of the collision. Furthermore, they testified that if a seizure had occurred as testified to by Dr. Morforpoulos and that if plaintiff had turned the steering wheel to the left as he claimed the car would not and could not have pursued the course described by plaintiff.

Under New York law where

an article is of such a character that when used for the purpose for which it is made it is likely to be a source of danger to several or many people if not properly designed and fashioned, the manufacturer as well as the vendor is liable, for breach of law-implied warranties, to the persons whose use is contemplated.

*Goldberg v. Kollsman Instrument Corp.*, 12 N. Y. 2d 432, 436-37, 191 N.E. 2d 81, 83, 240 N.Y.S. 2d 592, 594-95 (1963); see *Codling v. Paglia*, 32 N. Y. 2d 330, 342, 298 N.E. 2d 622, 628, 345 N.Y.S. 2d 461, 469 (1973); *Mac-*

*Decision by Costantino, D. J.*

*Pherson v. Buick Motor Co.*, 217 N.Y. 382, 111 N.E. 1050 (1919). Liability exists where the defective product was a substantial factor in bringing about the injury or damages and where (1) at the time of the occurrence the product was being used for the purpose and in the manner normally intended, (2) if the person injured or damaged was himself the user of the product he would not by the exercise of reasonable care have discovered the defect or perceived its danger, and (3) that by the exercise of reasonable care the person injured or damaged would not otherwise have averted his injuries or damages. *Codling v. Paglia*, *supra*, at N. Y. 2d 342, N.E. 2d 628-29, N.Y.S. 2d 469-70. Absent contributory fault strict liability is imposed upon the manufacturer for the proximate damages of the defect irrespective of whether it was negligent or was in privity with the injured party. *Codling v. Paglia*, *supra*; see Case Comment, *Codling v. Paglia*—New York Stands By The Innocent Bystander, 40 Brooklyn L. Rev. 390 (1973). Similarly the vendor of defective goods will be held liable for breaching an implied warranty of merchantability, even though he may not have been negligent and could not have discovered the defect. N.Y.U.C.C. §2-314 (McKinney, 1964); *Goldberg v. Kollsman*, *supra*. Moreover the vendor's liability will extend to injuries sustained by a member of the purchaser's household who reasonably could be expected to use or be affected by the defective product. N.Y.U.C.C. §2-318 (McKinney 1964); *Goldberg v. Kollsman*, *supra*; see *Bolm v. Triumph Corp.*, 33 N.Y. 2d 151, 305 N.E. 2d 769, 350 N.Y.S. 2d 644 (1973).

In the case *sub judice* the court finds that Chrysler manufactured the automobile in question with a defective tie rod assembly, which therefore was not fit for the purpose that it was made. Upon visual examination of the tie rod, one can see abrasions on the bearing and gaulling damage and smeared metal on the inside of the

*Decision by Costantino, D. J.*

socket. This clearly supports the testimony of Dr. Morfopoulos, plaintiff's expert witness, that the ball joint had a pre-existing defect. In view of Chrysler's failure to refute or even explain the visible defects, the court concludes that a seizure of the ball joint impaired the steering of the automobile, and that it was a substantial factor in causing the accident. Indeed, Chrysler's own expert witness testified that blue gaulling marks on the inside of the ball joint would be an indication of pre-impact seizure.

The ball joint, manufactured and designed by Chrysler was not susceptible to interference by the dealer or the purchaser of the automobile. As a matter of fact there is no evidence that anyone tampered with the ball joint assembly. Since the car was relatively new, having been driven only some 4,400 miles, and in light of the latent character of the defect, the reasonable inference to be drawn is that the defect existed at the time of manufacture and at the time of sale. Unless contributory fault could be shown both Chrysler and Woodbridge would be liable for the damages and injuries sustained by the plaintiff.

Defendants argue that plaintiff's negligent operation of the automobile caused the accident. There was testimony that the plaintiff failed to apply his brakes on time. However, the evidence fails to sustain defendants' position. The uncontroverted testimony of Dr. Morfopoulos was that at the speed the car was travelling plaintiff could not have had time to apply his brakes. It is evident then, that the plaintiff could not have averted the accident.

Next it is argued that plaintiff was negligent by not fastening the car's seat belts. The New York courts have consistently held that the failure to wear seat belts does not constitute contributory negligence. *Spier v. Baker*, 42 A. D. 2d 428, 348 N.Y.S. 2d 581 (3rd Dep't



*Decision by Costantino, D. J.*

1973); *Bartlett v. New York*, 49 A. D. 2d 207, 340 N.Y.S. 2d 769 (4th Dep't 1973); *Dillon v. Humphreys*, 56 Misc. 2d 211, 288 N.Y.S. 2d 14 (Sup. Ct. 1968). Additionally, the court finds that plaintiff was operating the automobile in the manner intended and that he in no way contributed to the accident. Accordingly, both Chrysler, as the manufacturer of the car, and Woodbridge as vendor are liable for plaintiff's injuries and damages.

In *Dole v. Dow Chemical Co.*, 30 N.Y. 2d 143, 282 N.E. 2d 288, 331 N.Y.S. 2d 382 (1972), the New York Court of Appeals enunciated a new rule with respect to the apportionment of damages among joint and concurring tortfeasors. Under the new doctrine damages are to be apportioned according to the degree of the fault of each of the respective parties. This principle applies to cross claims, *Kelly v. Long Island Lighting Co.*, 31 N.Y. 2d 25, 286 N.E. 2d 241, 334 N.Y.S. 2d 851 (1972); *Frey v. Bethlehem Steel Corp.*, 30 N.Y. 2d 764, 274 N.E. 2d 579, 333 N.Y.S. 2d 425 (1972), and to breach of warranty actions, *Noble v. Desco Shoe Corp.*, 41 A. D. 2d 908, 343 N.Y.S. 2d 134 (1st Dep't 1973); see *Rubel v. Strachow*, 72 Misc. 2d 734, 340 N.Y.S. 2d 691 (Sup. Ct. 1973). In the case at bar, the primary responsibility for the defective ball joint lies with Chrysler. Woodbridge's degree of fault was minimal in that it could not have discovered the defect and did nothing to create it. Accordingly, Woodbridge is allowed full indemnification over and against Chrysler. Chrysler's cross-claim against Woodbridge and its counter-claim against Francis J. Langford are dismissed.

*Damages*

Upon all the testimony and credible evidence proffered in this case, the court finds Chrysler liable to the infant plaintiff for the personal injuries sustained. Though



*Decision by Costantino, D. J.*

there was proof that the infant was not using the available seat belt at the time of the accident, this will not affect the amount of recoverable damages. Under New York's present doctrine of contributory negligence there can be no mitigation of damages because of a plaintiff's failure to use a safety device unless such omission contributed to the accident which caused plaintiff's injuries. *Codling v. Paglia, supra; Spier v. Baker, supra; Bartlett v. New York, supra; Dillon v. Humphreys, supra.*

The injuries sustained by the infant are documented by the various reports and records furnished by St. Vincent's Medical Center, Staten Island, New York. The court therefore finds that as a direct result of the accident in question the infant plaintiff sustained serious injuries. His permanent injuries consist of a small scar located under his lower lip and a chipped tooth. All other injuries have been satisfactorily healed. Accordingly, the court awards the infant plaintiff the sum of \$9,000 for his permanent injuries and for his pain and suffering. The father and guardian *ad litem* is awarded the sum of \$1,420.70, for the special damages incurred by him.

The foregoing opinion shall constitute the court's findings of fact and conclusions of law, as required by Fed. R. Civ. P. 52(a).

Settle judgment on notice.

s/ MARK A. COSTANTINO  
U. S. D. J.

**Judgment Appealed From.**

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[SAME TITLE.]

The above entitled action having been tried by the Court without a jury and the Court having made an opinion in writing containing its findings of fact and conclusions of law as required by FRCP 52 (a), it is

Now, on motion of Marshall G. Kaplan, attorney for the plaintiff,

ORDERED AND ADJUDGED, that Francis J. Langford, as natural guardian of Frank P. Langford, an infant, have judgment against the defendants, Chrysler Motors Corp. and Woodbridge Dodge, Inc., in the sum of \$9000.00; and it is further

ORDERED AND ADJUDGED, that Francis J. Langford, individually, have judgment against defendants, Chrysler Motors Corp. and Woodbridge Dodge, Inc., in the sum of \$1420.70, plus costs and disbursements as taxed by the Clerk herein in the sum of \$94.04 making in all a total of \$1514.74; and it is further

ORDERED AND ADJUDGED, that the defendant Woodbridge Dodge, Inc. be and it is hereby allowed full indemnification for the sums adjudged herein over and against the defendant Chrysler Motors Corp.; and it is further

ORDERED AND ADJUDGED, that defendant's Chrysler Motors Corp. cross-claim against the defendant Woodbridge Dodge, Inc. and its counterclaim against the plaintiff Francis J. Langford, be and the same hereby are dismissed.

Dated: Brooklyn, New York

April 30, 1974.

MARK A. COSTANTINO

*U. S. D. J.*

**Notice of Appeal of Defendant, Chrysler Motors Corp.**

**UNITED STATES DISTRICT COURT,**

**EASTERN DISTRICT OF NEW YORK.**

**[SAME TITLE.]**

**SIRS:**

Please Take Notice, that the defendant, Chrysler Motors Corp. hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment, and each and every part thereof, filed in this action on May 6th, 1974.

Dated: New York, N.Y.

May 7, 1974.

EMILE Z. BERMAN AND A. HAROLD FROST  
By: Warren V. Ausubel, Member of the Firm  
Attorneys for Defendant, Chrysler Motors Corp.

Office & P. O. Address  
77 Water Street  
New York, N. Y. 10005

**To:**

Clerk, United States District Court  
Eastern District of New York

Marshall Kaplan, Esq.  
Attorney for Plaintiff  
50 Court Street  
Brooklyn, N. Y. 11201

Markhoff, Gottlieb, Lazarus, D'Auria  
& Maldonado, Esqs.  
Attorneys for Defendant, Woodbridge Dodge  
401 Broadway  
New York, N. Y.

**Stipulation *Re* Exhibits.**

UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

---

FRANCIS J. LANGFORD, individually and as natural guardian  
of Frank P. Langford, an infant,

*Plaintiff-Appellee,*

*against*

CHRYSLER MOTORS CORPORATION,

*Defendant-Appellant,*

*and*

WOODBIDGE DODGE, Inc.,

*Defendant-Appellee.*

---

IT IS HEREBY STIPULATED AND CONSENTED TO by and between the attorneys for the respective parties hereto, pursuant to Appellant Rule 11 and General Rule 20 of the Rules of the United States Court of Appeals for the Second Circuit that the printing of the exhibits admitted in evidence or marked for identification may be dispensed



*Stipulation Re Exhibits*

with and the exhibits may be handed up to the Court upon the argument of the appeal.

Dated: New York, N.Y.  
May 9, 1974.

s/ MARSHALL G. KAPLAN  
Attorney for Plaintiff-Appellee

EMILE Z. BERMAN and A. HAROLD FROST  
By: s/ Marvin V. Ausubel  
A Member of the Firm  
Attorneys for Defendant-Appellant

MARKHOFF, GOTTLIEB, LAZARUS, D'AURIA &  
MALDONADO  
By: s/ Julian H. Gottlieb  
A Member of the Firm  
Attorneys for Defendant-Appellee

Services of three (3) copies of  
the within

herby admitted this 29 day

of

July

, 1974

Marshall S. Kaper  
Attorney for Appellee

Services of three (3) copies of

the within Appendix is

herby admitted this 29 day

of July

, 1974

Julian H. Fortist  
Attorney for appellee